

Moriarity - Davenport - 2/21/20

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12:08:21 1 was his son, but a young -- young male came out
12:08:26 2 from -- from that house.

12:08:27 3 BY MR. DAVENPORT:

12:08:27 4 Q. What led you to believe that it may
12:08:29 5 have been Mr. Kistner's son?

12:08:30 6 A. I don't -- I don't know if it was ever
12:08:38 7 said that it was his son, but he came out of the
12:08:41 8 same house that Mr. Kistner came out of.

12:08:43 9 Q. So you did see Mr. Kistner come out of
12:08:45 10 the house, the same house that that individual came
12:08:48 11 out of?

12:08:49 12 A. Yeah.

12:08:49 13 Q. Okay. Did you watch Mr. Kistner leave
12:08:53 14 that house initially?

12:08:55 15 A. It -- it wasn't too important enough
12:08:59 16 for me at the time. We were just leaving.

12:09:03 17 Q. Was -- were you in your police vehicle
12:09:06 18 when you saw Mr. Kistner first?

12:09:09 19 MS. HUGGINS: Form.

12:09:12 20 THE WITNESS: Yeah, I don't remember.

12:09:13 21 BY MR. DAVENPORT:

12:09:13 22 Q. Were you out in the street?

12:09:16 23 A. No. I would have been in the car.

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12:09:18 1 Q. Okay. And so how long approximately
12:09:21 2 was it, after you first saw Mr. Kistner, that you
12:09:24 3 then made it out into the street?

12:09:29 4 A. From when we were trying to leave, to
12:09:32 5 when I saw him come into the street? Is that what
12:09:35 6 you're saying?

12:09:36 7 Q. Well, I guess what you were telling me
12:09:38 8 is that you saw that Mr. Kistner walked out of the
12:09:40 9 same house that the second person came out of.

12:09:42 10 So I guess what my question is: After you
12:09:46 11 first saw Mr. Kistner come out of that house, how
12:09:48 12 long was it before he entered the street?

12:09:49 13 MS. HUGGINS: Form. You can answer.

12:09:50 14 THE WITNESS: I don't -- I don't -- I don't
12:09:57 15 know if I'd be able to judge that time. I'm -- I'm
12:10:01 16 thinking it was quick.

12:10:02 17 BY MR. DAVENPORT:

12:10:02 18 Q. Was it minutes or was it seconds?

12:10:05 19 A. Not many minutes.

12:10:07 20 Q. But you're thinking it would have been
12:10:10 21 minutes?

12:10:10 22 A. Like maybe one or maybe seconds.

12:10:14 23 Q. Okay.

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12:10:16 1 A. Yeah, I don't know.

12:10:17 2 Q. Do you know why you and Karl Schultz
12:10:20 3 would have been sitting in your police vehicle for
12:10:22 4 a few minutes after you first entered your police
12:10:25 5 vehicle?

12:10:26 6 MS. HUGGINS: Form.

12:10:26 7 THE WITNESS: I -- I don't remember.
12:10:29 8 He could have been giving me an on-the-spot
12:10:33 9 evaluation. We could have just been talking about
12:10:38 10 nothing. We could have been just sitting there.

12:10:42 11 And like I said, I don't remember what --
12:10:45 12 what all we did on the larceny at 33 Schmarbeck, so
12:10:50 13 we could have just been talking about that right
12:10:53 14 before we were leaving.

12:10:54 15 BY MR. DAVENPORT:

12:10:54 16 Q. Would that be something that he would
12:10:56 17 normally do is give you an on-the-spot evaluation?

12:10:58 18 A. Sometimes.

12:10:59 19 Q. Was that often or --

12:11:02 20 A. Over 16 weeks, yeah, I mean, sometimes
12:11:05 21 he would just be like: You did a good job, or,
12:11:08 22 hey, do this, do this better.

12:11:09 23 Q. What kinds of things would he ask you

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12:11:12 1 to -- you know, what kind -- sorry. Strike that.

12:11:15 2 What kinds of procedures would he point out
12:11:17 3 that you didn't possibly do correctly during your
12:11:20 4 training?

12:11:20 5 MS. HUGGINS: Form.

12:11:21 6 THE WITNESS: Well, like I said, basic
12:11:25 7 information, if you -- if you get their name, date
12:11:28 8 of birth, and phone number, maybe you forget
12:11:30 9 a phone number to write down or something or, you
12:11:34 10 know, something -- something small like that, he
12:11:37 11 would be like: Hey, go back out there and do this.
12:11:39 12 Or, hey, make sure you do this better next time.

12:11:44 13 BY MR. DAVENPORT:

12:11:44 14 Q. Now, would you have -- I'm sorry.
12:11:50 15 Strike that.

12:11:51 16 For -- when you were walking back towards
12:11:54 17 Mr. Kistner towards the police vehicle, you said
12:11:56 18 that you saw him on the ground, correct?

12:11:59 19 A. Yeah.

12:12:00 20 Q. Was he sitting up, or was he laying
12:12:02 21 down?

12:12:10 22 A. I think he was laying down, but
12:12:12 23 I can't -- I can't be too sure.

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12:12:15 1 Q. Okay.

12:12:16 2 A. Very long time ago.

12:12:17 3 Q. No. Sure. Sure.

12:12:20 4 Was he holding any part of his body at that

12:12:24 5 time?

12:12:24 6 A. I don't remember.

12:12:24 7 Q. Okay. Was he complaining about his

12:12:27 8 head hurting him?

12:12:27 9 A. I don't remember.

12:12:31 10 Q. Who was the first person that made it

12:12:34 11 to Mr. Kistner? Who first spoke to him?

12:12:36 12 MS. HUGGINS: Form.

12:12:38 13 THE WITNESS: I -- at this point in time, it

12:12:40 14 was not me, so I don't know who spoke to him first.

12:12:45 15 BY MR. DAVENPORT:

12:12:45 16 Q. Okay. Once somebody did speak to

12:12:52 17 Mr. Kistner, do you remember what was said to him?

12:12:54 18 A. No.

12:12:54 19 Q. What kinds of things would have been

12:12:56 20 said to him?

12:12:56 21 MS. HUGGINS: Form.

12:12:57 22 THE WITNESS: I'm -- I'm unsure of what type

12:13:00 23 of things could have or would have been said to

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12:13:05 1 him. Very new in a very chaotic situation.

12:13:09 2 I didn't do much but attempt to observe as much

12:13:13 3 as I could.

12:13:14 4 BY MR. DAVENPORT:

12:13:14 5 Q. And what were you trying to observe?

12:13:17 6 A. What other officers were -- were doing,
12:13:21 7 what Mr. Kistner was doing.

12:13:22 8 Q. Now, I understand that you were new at
12:13:24 9 the time --

12:13:24 10 A. Yeah.

12:13:24 11 Q. -- but based on the experience that
12:13:27 12 you've been able to gain, what should have been
12:13:29 13 done if there was an individual -- whether he threw
12:13:31 14 himself at the police vehicle or whether the police
12:13:33 15 vehicle struck him, if he was on the ground, what
12:13:36 16 should have been done next?

12:13:37 17 MS. HUGGINS: Form.

12:13:37 18 THE WITNESS: Well, I mean, it's not so much
12:13:40 19 as what should have been done, it's what we did.
12:13:42 20 And what we did was observe what had just taken
12:13:46 21 place in front of us, and then other senior
12:13:51 22 officers assessed what to do.

12:13:53 23 BY MR. DAVENPORT:

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12:13:53 1 Q. Okay. And was there any sort of an
12:13:54 2 assessment of any physical injuries or medical
12:13:57 3 conditions that he may have had?

12:14:00 4 A. Yeah. I mean, as we're -- as we were
12:14:02 5 walking up, you can -- you can assess the person as
12:14:07 6 they are visually in front of you.

12:14:12 7 You know, he didn't have bones sticking out.
12:14:17 8 There was no tons of blood or anything leaking out
12:14:21 9 anywhere. That was the assessment that I made.
12:14:24 10 I don't know what the other officers -- senior
12:14:28 11 officers did. Or observed. I'm sorry.

12:14:31 12 Q. Right.

12:14:32 13 Now, would it only take bones sticking out
12:14:35 14 or blood gushing all over the place for that person
12:14:37 15 to have a physical examination by a physician of
12:14:40 16 any injuries he may have had?

12:14:41 17 MS. HUGGINS: Form.

12:14:44 18 THE WITNESS: No, but we did take him to
12:14:46 19 ECMC.

12:14:46 20 BY MR. DAVENPORT:

12:14:46 21 Q. And how long, approximately, after he
12:14:49 22 had been on the ground, was he taken to ECMC?

12:14:51 23 A. I'm -- I'm unsure.

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12:14:53 1 Q. What would be the appropriate response
12:14:56 2 time for getting him to ECMC after a car -- a
12:14:59 3 collision with a car?

12:14:59 4 MS. HUGGINS: Form.

12:15:00 5 THE WITNESS: I -- I would say that there's --
12:15:03 6 the appropriate response time would be determined
12:15:08 7 by the actions of the person that was -- that was
12:15:12 8 hit and the officer's assessment.

12:15:15 9 BY MR. DAVENPORT:

12:15:15 10 Q. Now, why would the actions of the
12:15:17 11 individual play a part in whether that person
12:15:20 12 should go to the hospital for an assessment of
12:15:21 13 physical injuries?

12:15:22 14 A. Well, I say -- I say the actions of the
12:15:25 15 person because I'm going off of what I had
12:15:28 16 previously stated about observations.

12:15:30 17 If you're bleeding from a gunshot wound, and
12:15:33 18 sometimes ADI, there's just no -- I'm sorry. Not
12:15:36 19 ADI, but an ambulance, sometimes there's no
12:15:38 20 ambulance even available, so we might take them
12:15:41 21 immediately.

12:15:42 22 Q. Now, even assuming that there might not
12:15:45 23 be blood gushing, would you sometimes take

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12:15:49 1 individuals to ECMC yourself rather than waiting
12:15:51 2 for an ambulance to arrive?

12:15:53 3 A. There are -- there are times, yes.

12:15:56 4 Q. And what would be those times where an
12:15:58 5 officer rather than an ambulance would take that
12:16:01 6 individual to assess them for physical injuries?

12:16:04 7 MS. HUGGINS: Form.

12:16:05 8 THE WITNESS: Maybe because -- I mean, this
12:16:08 9 goes back to where I said that there's a lot of
12:16:10 10 different variables.

12:16:11 11 Maybe the officer wants to just get them
12:16:14 12 there quicker. Maybe there's no ambulance
12:16:17 13 available. Maybe they're saying that the ambulance
12:16:20 14 is taking too long. The observed potential
12:16:26 15 injuries.

12:16:27 16 I mean, there's -- there's a lot of
12:16:28 17 different variables that would -- that would make
12:16:31 18 someone take them to ECMC in their patrol vehicle
12:16:35 19 or not to.

12:16:36 20 BY MR. DAVENPORT:

12:16:36 21 Q. So what types of observed personal
12:16:39 22 injuries would make it where an officer rather than
12:16:41 23 an ambulance would take that person to ECMC?

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12:16:45 1 MS. HUGGINS: Form.

12:16:45 2 THE WITNESS: So -- so, again, it would
12:16:48 3 go -- it would go back to other different variables.

12:16:51 4 If -- there's -- there's been times where
12:16:52 5 people have been shot and we let them go in an
12:16:55 6 ambulance. There's other times where we rush them
12:16:58 7 there in our -- in our patrol car.

12:16:59 8 BY MR. DAVENPORT:

12:17:00 9 Q. Well, sure, but let's move away from
12:17:02 10 a gunshot wound. Let's say that a person had some
12:17:06 11 sort of a head injury, because that's, you know,
12:17:09 12 more pertinent to this case.

12:17:10 13 What sorts of circumstances would make it
12:17:12 14 where a police officer rather than an ambulance
12:17:16 15 would drive that individual to the hospital?

12:17:19 16 MS. HUGGINS: Form.

12:17:24 17 THE WITNESS: Maybe we're just trying to get
12:17:27 18 them quicker attention, and it's -- it's -- if
12:17:33 19 the -- maybe if the subject is still moving around,
12:17:35 20 we know that there's no neck injury, so you can
12:17:38 21 still take them.

12:17:40 22 BY MR. DAVENPORT:

12:17:40 23 Q. Is that --

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12:17:41 1 A. There's other -- there's a lot of
12:17:43 2 different variables.

12:17:46 3 Q. Now --

12:17:46 4 A. Going off of observations from that
12:17:50 5 specific time. There's no -- there's no set rule
12:17:53 6 that one follows.

12:17:56 7 Q. Now, would you agree with me that if
12:17:59 8 there was some sort of internal brain bleeding,
12:18:01 9 that would be something that would be not
12:18:03 10 observable, correct?

12:18:04 11 MS. HUGGINS: Form.

12:18:05 12 THE WITNESS: Internal brain bleeding would
12:18:06 13 not be observable, that is correct.

12:18:07 14 BY MR. DAVENPORT:

12:18:07 15 Q. And would that be part of your
12:18:09 16 assessment of the individual, whether he should be
12:18:12 17 driven by police officers or driven by an ambulance?

12:18:15 18 MS. HUGGINS: Form.

12:18:16 19 THE WITNESS: Can you -- can you say that
12:18:18 20 again?

12:18:19 21 BY MR. DAVENPORT:

12:18:19 22 Q. Would it be part of your consideration
12:18:21 23 as a police officer, if that person may have

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12:18:23 1 internal brain bleeding, that that person should go
12:18:26 2 by ambulance or by a police vehicle?

12:18:30 3 A. Sure, if there was something that we
12:18:33 4 thought was happening internally.

12:18:35 5 Q. And what kinds of things would you
12:18:38 6 observe that would lead you to believe that
12:18:40 7 something was happening internally?

12:18:41 8 MS. HUGGINS: Form.

12:18:42 9 THE WITNESS: Maybe discoloration of the
12:18:45 10 face. Maybe there was some breathing problems.
12:18:52 11 Before we might do something like that, maybe an
12:18:55 12 officer with experience might make some type of
12:18:59 13 decision as far as whether or not to take someone.

12:19:05 14 BY MR. DAVENPORT:

12:19:05 15 Q. If a person had an abrasion on their
12:19:07 16 head after a car accident, would it be an ambulance
12:19:11 17 or a police officer that would drive that individual
12:19:13 18 to the hospital?

12:19:14 19 MS. HUGGINS: Form.

12:19:15 20 THE WITNESS: That can be determined on scene.
12:19:20 21 That can change from -- from accident to accident.

12:19:24 22 BY MR. DAVENPORT:

12:19:24 23 Q. And what sorts of things in your

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12:19:26 1 training would lead you to believe that that is
12:19:28 2 something that is an officer's discretion rather
12:19:30 3 than something that you are mandated to do?

12:19:32 4 MS. HUGGINS: Form.

12:19:37 5 THE WITNESS: You mean taking them in the
12:19:39 6 patrol vehicle --

12:19:40 7 BY MR. DAVENPORT:

12:19:40 8 Q. Rather than an ambulance.

12:19:41 9 A. -- up to ECMC?

12:19:43 10 Maybe the -- the -- the person is
12:19:47 11 complaining of pain -- severe pain and there's no
12:19:50 12 ambulance available. Or maybe we're just trying to
12:19:53 13 get them quicker medical attention.

12:19:55 14 Q. If somebody noticed an abrasion on
12:19:57 15 their head, would they have to be medically
12:20:00 16 examined?

12:20:00 17 MS. HUGGINS: Form.

12:20:02 18 THE WITNESS: No, not necessarily. They
12:20:03 19 don't have to be. They can deny medical attention.

12:20:07 20 BY MR. DAVENPORT:

12:20:07 21 Q. If that person doesn't deny medical
12:20:09 22 attention, are you obligated, as a police officer,
12:20:11 23 to ensure that that person gets medical attention?

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12:20:13 1 A. Yeah.

12:20:13 2 Q. Do you, as you sit here today, know if
12:20:17 3 Mr. Kistner had an abrasion on his head that day?

12:20:19 4 A. I don't -- I don't remember. I was
12:20:23 5 observing what the other officers were doing.

12:20:24 6 Q. Now, if somebody was complaining that
12:20:28 7 their head hurt, are you obligated, as a police
12:20:30 8 officer, to then go and check that person's head?

12:20:39 9 A. Yeah.

12:20:41 10 Q. Do you know, as you sit here today, if
12:20:43 11 anybody went to go check Mr. Kistner's head?

12:20:46 12 A. I don't know if -- I don't know if --
12:20:49 13 if the other officers were just observing from
12:20:52 14 where they were standing or not.

12:20:56 15 They very well could have been just
12:20:59 16 observing from where -- where they were standing.

12:21:02 17 Q. Do you agree that if a person has hair
12:21:04 18 rather than no hair, it may not be something that's
12:21:08 19 observable without actually putting your hands
12:21:11 20 through that individual's hair to notice if there's
12:21:13 21 an abrasion or not?

12:21:14 22 MS. HUGGINS: Form.

12:21:19 23 THE WITNESS: I would say that the relevance

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12:21:23 1 to do that wouldn't be there when we can just have
12:21:27 2 a medical professional do that and be the -- be the
12:21:31 3 judge on that.

12:21:33 4 **BY MR. DAVENPORT:**

12:21:33 5 **Q.** Now, I agree that, you know, this
12:21:36 6 person should eventually be checked by a medical
12:21:38 7 professional, but if at the scene that person is
12:21:41 8 complaining of a head injury, you don't observe any
12:21:44 9 abrasions, and they might be located in the hair
12:21:45 10 somewhere where there's hair located, what would
12:21:49 11 determine whether that person needs to go directly
12:21:52 12 to the hospital through an ambulance or whether the
12:21:55 13 police officer can drive that person to go get the
12:22:00 14 medical attention that they need?

12:22:02 15 **MS. HUGGINS:** Form. Asked and answered.

12:22:03 16 **THE WITNESS:** There's -- there's a -- it's
12:22:05 17 just police discretion.

12:22:06 18 Like I said, I've -- I've done that a few
12:22:09 19 times where I've just driven them up there and
12:22:12 20 never observed any -- any -- any physical or
12:22:16 21 medical injury and just took them in there to see
12:22:18 22 a medical professional.

12:22:20 23 There's other times where I just call on the

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12:22:25 1 scene and I've never observed anything, and there's
12:22:28 2 times where I have observed things and I've taken
12:22:29 3 them to ECMC or let an ambulance come to the scene.

12:22:34 4 I mean, it just depends on -- on the call.
12:22:36 5 But I wasn't making that call that day.

12:22:37 6 BY MR. DAVENPORT:

12:22:37 7 Q. Sure.

12:22:38 8 If somebody has an abrasion on their
12:22:41 9 forehead, would they be required to get medical
12:22:44 10 attention?

12:22:44 11 A. They're not required to, if they can
12:22:47 12 decline medical attention, if they choose to.

12:22:49 13 Q. If they decline -- if they don't
12:22:51 14 decline medical attention, are you required, as
12:22:53 15 a police officer, to make sure that they have their
12:22:55 16 head checked, if you see an --

12:22:55 17 A. If they --

12:22:58 18 Q. -- abrasion on there?

12:22:59 19 A. If they -- if they don't decline, yeah.
12:23:01 20 I mean, there's times where -- like I said, it
12:23:03 21 depends on what -- what the person wants, because
12:23:06 22 people have said, well, I'll just go get it checked
12:23:09 23 out later.

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12:23:09 1 They've told us that, and we don't have to --

12:23:13 2 Q. Did Mr. --

12:23:14 3 A. -- to wait for them.

12:23:15 4 Q. Did Mr. Kistner tell you that he was
12:23:17 5 going to go get his head checked out later?

12:23:19 6 A. I don't remember if Mr. Kistner told
12:23:21 7 me -- anything specifically to me. He could have
12:23:25 8 told other officers that.

12:23:27 9 Q. Now, when you were walking back towards
12:23:30 10 Mr. Kistner, you said that he was on the ground,
12:23:32 11 correct?

12:23:33 12 A. Yeah. Yeah.

12:23:34 13 Q. And when you first got to Mr. Kistner,
12:23:38 14 did you make your own visual assessment of
12:23:40 15 Mr. Kistner?

12:23:42 16 A. Yeah.

12:23:42 17 Q. Was he on the ground, or was he sitting
12:23:45 18 up at that time?

12:23:47 19 MS. HUGGINS: Form.

12:23:48 20 THE WITNESS: I don't -- I don't --

12:23:49 21 MS. HUGGINS: Asked and answered.

12:23:51 22 THE WITNESS: I don't remember if he was
12:23:52 23 sitting down. I'm pretty sure he was laying down.

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12:23:54 1 BY MR. DAVENPORT:

12:23:54 2 Q. Did Mr. Kistner ever sit up at any
12:23:56 3 time?

12:23:58 4 A. I don't remember.

12:23:59 5 Q. Did anybody bring Mr. Kistner to his
12:24:03 6 feet?

12:24:03 7 A. I know that I helped him walk back to
12:24:08 8 the truck. I don't know if I was one of the ones
12:24:10 9 that sat him up and helped him to his feet.

12:24:18 10 Q. Do you remember who put the handcuffs
12:24:20 11 on Mr. Kistner?

12:24:21 12 A. I don't.

12:24:22 13 Q. Were handcuffs put on Mr. Kistner?

12:24:24 14 A. I believe so.

12:24:26 15 Q. And who would have been the person to
12:24:28 16 put those handcuffs on Mr. Kistner?

12:24:30 17 A. I don't remember.

12:24:31 18 Q. Up until this point, have you ever put
12:24:35 19 handcuffs on an individual?

12:24:36 20 A. Yes.

12:24:36 21 Q. And was that something that you did
12:24:38 22 before January 1st of 2017?

12:24:44 23 A. I don't know if I had used my own cuffs

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12:24:47 1 on someone up until this point.

12:24:49 2 Q. Had you ever used somebody else's

12:24:51 3 handcuffs before January 1st of 2017?

12:24:56 4 A. I don't remember yet.

12:24:58 5 Q. Okay. During your 16 weeks, do you
12:25:00 6 have an approximation for how many times you used
12:25:03 7 handcuffs on an -- an individual?

12:25:05 8 A. It was -- it was often, but up until
12:25:09 9 this date, I don't -- I don't remember if I had
12:25:10 10 done that yet.

12:25:11 11 Q. Okay. As you were walking Mr. Kistner
12:25:14 12 back towards your vehicle, what was the purpose for
12:25:16 13 walking him towards your vehicle rather than Lauren
12:25:21 14 McDermott and Jenny Velez's vehicle?

12:25:23 15 A. I don't remember why that call was
12:25:24 16 made.

12:25:25 17 Q. Do you know who that call was made by?

12:25:30 18 A. I don't remember.

12:25:31 19 Q. Who was the most senior officer at that
12:25:34 20 situation?

12:25:36 21 A. I don't know how much time Lieutenant
12:25:39 22 Velez has on.

12:25:40 23 Q. Okay.

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12:25:41 1 A. Maybe -- maybe Karl, though.

12:25:42 2 Q. Okay. Who -- at that point, was there
12:25:46 3 any conversation that was had between any of the
12:25:49 4 officers?

12:25:50 5 A. What do you mean?

12:25:53 6 Q. Was there any sort of a conversation,
12:25:55 7 prior to getting Mr. Kistner to his feet, between
12:25:58 8 you, Mr. Schultz, Ms. McDermott, and Ms. Velez?

12:26:04 9 A. I don't know what anyone would be
12:26:07 10 talking about. I think I was more in the state of
12:26:11 11 trying to observe what was going on.

12:26:17 12 Q. Did you at all help -- well, you said
12:26:20 13 that you helped Mr. Kistner walk him back towards
12:26:23 14 your police vehicle, correct?

12:26:25 15 A. Yeah. Per -- per the video that you
12:26:28 16 guys have, yeah. That's --

12:26:29 17 Q. Okay.

12:26:30 18 A. That's what I was going off of.

12:26:32 19 Q. And do you know who else was helping to
12:26:34 20 get Mr. Kistner back to the police vehicle?

12:26:35 21 A. I'd have to see the video again.

12:26:36 22 Q. Okay. Okay. Where did you put
12:26:39 23 Mr. Kistner after you walked him back to your

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12:26:42 1 police vehicle?

12:26:43 2 A. It was me and another officer. I don't
12:26:47 3 remember which one. We put him in the back of 532.

12:26:51 4 Q. Now, was he arrested at that point?

12:26:55 5 A. At -- at this point I don't -- I didn't
12:26:58 6 know. I was way too brand new.

12:27:00 7 Q. Okay.

12:27:00 8 A. I didn't -- I didn't know what was
12:27:01 9 going on.

12:27:04 10 Q. Now, at any point before handcuffs were
12:27:07 11 put on Mr. Kistner, was -- did anybody read him his
12:27:10 12 Miranda rights?

12:27:12 13 A. I don't remember.

12:27:13 14 Q. After handcuffs were put on Mr. Kistner,
12:27:16 15 did anybody read him his Miranda rights?

12:27:18 16 A. If -- if they didn't, I don't -- I
12:27:27 17 don't remember.

12:27:27 18 Q. Now, once Mr. Kistner was in the back
12:27:29 19 of your police vehicle, what were the next steps at
12:27:37 20 that point?

12:27:37 21 A. I believe I just referred to whatever
12:27:40 22 Karl Schultz was -- was doing.

12:27:42 23 Q. Do you recall what was done after

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12:27:44 1 Mr. Kistner was put in the back of the police
12:27:46 2 vehicle?

12:27:46 3 A. I don't.

12:27:49 4 Q. Was there any reason to keep him in the
12:27:51 5 back of the police vehicle rather than outside the
12:27:53 6 police vehicle?

12:27:55 7 A. I wouldn't know what the senior
12:27:57 8 officers were -- were thinking at the time.

12:28:00 9 Q. But as you sit here today, with the
12:28:02 10 experience that you now have, would there be any
12:28:05 11 reason to have Mr. Kistner in the back of the
12:28:06 12 police vehicle rather than outside the police
12:28:08 13 vehicle?

12:28:09 14 MS. HUGGINS: Form.

12:28:09 15 THE WITNESS: If -- if the officers had him
12:28:13 16 under arrest, then yeah, we would -- we would have
12:28:18 17 him in the back of a vehicle.

12:28:23 18 BY MR. DAVENPORT:

12:28:23 19 Q. Would there be any reason to have him
12:28:26 20 in the back of the police vehicle if he was not
12:28:27 21 arrested?

12:28:29 22 A. Yeah, you can detain people in the back
12:28:31 23 of a vehicle.

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12:28:32 1 Q. And could you explain to me what is the
12:28:34 2 difference between being detained, as opposed to
12:28:36 3 arrested?

12:28:37 4 A. Someone that -- someone that is not
12:28:39 5 free to go and they're going to go to jail is under
12:28:42 6 arrest.

12:28:42 7 There's other times where I've detained
12:28:44 8 people to write them tickets and they're totally
12:28:48 9 free to go. You know what I mean?

12:28:51 10 They can -- they can still be in the back of
12:28:53 11 a patrol vehicle and not be under arrest.

12:28:55 12 Q. Now, when a person is detained, do you
12:28:57 13 have to read that person their Miranda rights?

12:29:00 14 MS. HUGGINS: Form.

12:29:00 15 THE WITNESS: No.

12:29:01 16 BY MR. DAVENPORT:

12:29:03 17 Q. Is it only when they're arrested that
12:29:05 18 you then have to read them their Miranda rights?

12:29:07 19 A. Yeah.

12:29:07 20 MS. HUGGINS: Form.

12:29:07 21 THE WITNESS: Yeah.

12:29:09 22 BY MR. DAVENPORT:

12:29:11 23 Q. Okay. Do you know at what point it

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12:29:13 1 went from Mr. Kistner being detained, as opposed to
12:29:15 2 arrested?

12:29:15 3 A. I -- the day that I was on scene, no,
12:29:17 4 I don't.

12:29:17 5 Q. Was it on Schmarbeck?

12:29:27 6 A. I'm unsure. I can't speak for -- for
12:29:29 7 Lauren and -- and Jenny. I don't -- I don't know
12:29:32 8 when it is -- when it was that it was determined
12:29:35 9 that they were going to arrest him.

12:29:37 10 Q. Now, why do you say that it would have
12:29:39 11 been Lauren and Jenny that would have made that
12:29:42 12 determination to arrest Mr. Kistner?

12:29:43 13 MS. HUGGINS: Form.

12:29:44 14 THE WITNESS: They were directly involved
12:29:46 15 with the incident.

12:29:46 16 BY MR. DAVENPORT:

12:29:47 17 Q. Why wouldn't Karl Schultz have any sort
12:29:49 18 of a say in when Mr. Kistner was arrested?

12:29:52 19 MS. HUGGINS: Form.

12:29:53 20 THE WITNESS: The incident didn't involve
12:29:55 21 me, Karl, or our truck. It involved Jenny Velez
12:29:59 22 and Lauren and -- and their truck.

12:30:02 23 BY MR. DAVENPORT:

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12:30:02 1 Q. Would you have been able to make the
12:30:05 2 arrest even though it did not involve your truck?

12:30:15 3 A. I wouldn't see any reason why we would
12:30:17 4 make that arrest.

12:30:18 5 MS. HUGGINS: Form.

12:30:22 6 BY MR. DAVENPORT:

12:30:22 7 Q. Now, once you got Mr. Kistner back to
12:30:25 8 your police vehicle, he was sitting down in your
12:30:29 9 police vehicle, in the back of your police vehicle;
12:30:31 10 is that correct?

12:30:31 11 A. Yes.

12:30:35 12 Q. Now, were any sort of assessments of
12:30:37 13 his physical condition made at that time?

12:30:40 14 A. I don't -- I don't remember.

12:30:41 15 Q. What about emotionally?

12:30:44 16 Are you obligated, as a police officer, to
12:30:45 17 check on a person emotionally when they're placed
12:30:48 18 under arrest or detained?

12:30:49 19 A. Sure.

12:30:49 20 MS. HUGGINS: Form.

12:30:50 21 BY MR. DAVENPORT:

12:30:51 22 Q. Was there anything concerning about
12:30:54 23 Mr. Kistner's emotional or psychological state at

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12:31:00 1 that time?

12:31:00 2 A. Not that I -- not that I remember.

12:31:04 3 Q. Did Mr. Kistner say anything in the
12:31:05 4 back of the police vehicle?

12:31:07 5 A. I don't know. I think -- I think the
12:31:09 6 video you guys have, we walked away from the
12:31:12 7 vehicle.

12:31:12 8 Q. Okay.

12:31:13 9 A. So I don't -- I don't -- the time that
12:31:15 10 I was in the vehicle with Karl, taking him to ECMC,
12:31:19 11 I don't even remember what was said in there.

12:31:20 12 Q. Okay. So after you walked away from
12:31:24 13 the police vehicle, where did you go next?

12:31:32 14 A. I have to refer back to the -- the
12:31:36 15 video.

12:31:36 16 Q. Do you remember at all where Jim's son
12:31:38 17 was at that point, or the other individual who ran
12:31:41 18 out from the same house as Jim?

12:31:43 19 MS. HUGGINS: Form.

12:31:44 20 THE WITNESS: I don't remember at this
12:31:45 21 point.

12:31:45 22 BY MR. DAVENPORT:

12:31:48 23 Q. Okay. Was there ever a concern with

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12:31:50 1 this individual who ran out from Jim's house?

12:31:53 2 A. We would have to refer back to the
12:31:57 3 video.

12:31:58 4 Q. Well, I guess not --

12:32:00 5 A. He -- he approached -- he approached
12:32:04 6 officers. He approached officers and wanted to
12:32:11 7 speak to us. I remember that.

12:32:17 8 And I remember for purposes of officer
12:32:19 9 safety, we made him pat down, and we gave him
12:32:23 10 a -- a waistband pat-down. Make sure there was
12:32:25 11 no weapons or anything.

12:32:26 12 Q. Now, when was that pat-down done?
12:32:29 13 Was it when he initially made contact with the
12:32:33 14 police officers, or was that done later, the
12:32:35 15 pat-down of this individual?

12:32:35 16 A. We'd have to look at the video.
12:32:38 17 I don't remember.

12:32:38 18 Q. Okay. So this pat-down was made
12:32:42 19 because why?

12:32:43 20 MS. HUGGINS: Form. Asked and answered.

12:32:45 21 THE WITNESS: For safety reasons.

12:32:46 22 BY MR. DAVENPORT:

12:32:46 23 Q. And those safety reasons were why?

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12:32:50 1 What?

12:32:51 2 A. It's -- it's common that people
12:32:53 3 approach police with weapons on them.

12:32:55 4 Q. Okay. Did you have any reason to
12:32:57 5 believe that this individual approached police
12:32:59 6 officers with weapons?

12:33:00 7 A. There's no reason why I would believe
12:33:03 8 that anyone would walk up to us without weapons.

12:33:06 9 Q. There's never a time that individuals
12:33:09 10 would walk up to police officers without weapons?

12:33:11 11 MS. HUGGINS: Form.

12:33:12 12 THE WITNESS: It happens often.

12:33:13 13 BY MR. DAVENPORT:

12:33:14 14 Q. I guess -- I understand that it happens
12:33:16 15 often.

12:33:16 16 A. So -- so for -- for -- for my safety
12:33:18 17 and everyone else that's nearby, yeah, we always --
12:33:21 18 or I'm not going to say always, but often we'll --
12:33:24 19 we'll do pat-downs for weapons.

12:33:26 20 Q. Okay. So --

12:33:27 21 A. Because even someone that's just trying
12:33:29 22 to talk to us or make a complaint, they have
12:33:32 23 weapons on them.

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12:33:33 1 Q. Okay. So I guess that's my question is
12:33:35 2 that I understand that, you know, for officer
12:33:38 3 safety --

12:33:38 4 A. Yeah.

12:33:38 5 Q. -- you would always want to have that
12:33:41 6 pant-down, but there are other instances where
12:33:44 7 individuals approach police officers without
12:33:45 8 weapons, correct?

12:33:46 9 A. Yeah, correct.

12:33:47 10 Q. Okay. Now, do you remember approximately
12:33:51 11 what this individual looked like that was coming
12:33:53 12 out of the house?

12:33:54 13 MS. HUGGINS: Form.

12:33:55 14 THE WITNESS: Younger, white male.

12:33:58 15 BY MR. DAVENPORT:

12:33:58 16 Q. Okay. Do you remember approximately
12:34:01 17 what his size was?

12:34:02 18 A. I don't.

12:34:05 19 Q. Okay.

12:34:07 20 A. Yeah, I don't.

12:34:08 21 Q. Okay. Was he saying anything at that
12:34:14 22 time, when he first initially came out?

12:34:19 23 A. I think he was trying to find out what

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12:34:21 1 was going on, but I don't remember anything, what
12:34:24 2 he was saying.

12:34:24 3 Q. Okay. Do you know, was he using his
12:34:27 4 cell phone or any other sort of communicating
12:34:31 5 device?

12:34:31 6 A. I don't. I don't remember.

12:34:33 7 Q. Okay. Do you remember if he was trying
12:34:36 8 to make a call to an ambulance?

12:34:42 9 A. I don't remember if he had a phone or
12:34:44 10 not. I know that 911 calls were made.

12:34:50 11 Q. Do you remember him referring to an
12:34:52 12 ambulance being called?

12:34:53 13 A. I don't.

12:34:53 14 Q. Do you remember Jim being on the
12:34:56 15 ground, asking for an ambulance?

12:34:58 16 A. I don't.

12:34:59 17 Q. Okay. Where was that individual
12:35:04 18 standing when you performed the pat-down?

12:35:08 19 MS. HUGGINS: Form.

12:35:08 20 THE WITNESS: We'd -- we'd have to look at
12:35:10 21 the video that was provided.

12:35:12 22 BY MR. DAVENPORT:

12:35:12 23 Q. Okay.

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12:35:13 1 A. Because I don't -- I don't remember.

12:35:15 2 Q. Okay. And what would generally consist
12:35:17 3 of that pat-down?

12:35:19 4 MS. HUGGINS: Form.

12:35:20 5 THE WITNESS: Just patting -- patting down
12:35:22 6 the outside of his pants pockets, waistband.

12:35:27 7 Anyplace where I would think he might have a knife
12:35:30 8 or a gun or something.

12:35:31 9 But it was quite clear that, after the
12:35:33 10 pat-down, he didn't -- I mean, he didn't have
12:35:35 11 anything. I don't remember, but maybe he just
12:35:40 12 wanted to find out what was going on.

12:35:42 13 BY MR. DAVENPORT:

12:35:42 14 Q. If an individual went into -- close to
12:35:46 15 police officers and then walked away from those
12:35:48 16 police officers and tried to go back into their
12:35:50 17 home, would there be any reason to begin, commence
12:35:55 18 a pat-down of that individual?

12:35:57 19 MS. HUGGINS: Form.

12:35:58 20 THE WITNESS: Can you --

12:36:00 21 MR. DAVENPORT: So if -- I'm sorry. You can
12:36:03 22 strike that.

12:36:04 23 If -- if an individual approached police

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12:36:06 1 officers and then walked away from those police
12:36:08 2 officers, and then he tried to go back into the
12:36:10 3 house where he came from, would there be any reason
12:36:14 4 to do a pat-down of that individual? Bring him
12:36:17 5 back out, away from the house?

12:36:18 6 MS. HUGGINS: Form.

12:36:19 7 THE WITNESS: He could have -- he could have
12:36:22 8 said something that one of the officers might have
12:36:24 9 wanted to investigate further.

12:36:26 10 BY MR. DAVENPORT:

12:36:26 11 Q. And what kind of --

12:36:27 12 A. And then --

12:36:32 13 Q. -- things would those have been?

12:36:34 14 MS. HUGGINS: Form.

12:36:36 15 THE WITNESS: Could be tons of things.
12:36:38 16 I don't want to speculate what other officers heard
12:36:41 17 or what judgment calls or decisions they were
12:36:43 18 making.

12:36:43 19 BY MR. DAVENPORT:

12:36:43 20 Q. If that individual was saying that he
12:36:45 21 was going to call an ambulance, would that be
12:36:46 22 a reason to do a pat-down of that individual?

12:36:48 23 MS. HUGGINS: Form.

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12:36:48 1 THE WITNESS: No.

12:36:49 2 BY MR. DAVENPORT:

12:36:49 3 Q. Okay. So after the pat-down was done,
12:36:53 4 what would be the next steps?

12:36:55 5 Would you have to get background information
12:36:58 6 for that individual?

12:37:03 7 A. You know, you're -- I mean, it's not
12:37:05 8 required. Maybe -- like maybe we're just having
12:37:07 9 the conversation that he wanted to have now, now
12:37:10 10 that we know that the scene is safer.

12:37:12 11 Q. So after having that conversation -- to
12:37:16 12 have that conversation with somebody, would you
12:37:18 13 also want to verify any sort of identification or
12:37:21 14 anything like that?

12:37:23 15 A. I mean, you might want to, you might
12:37:26 16 not want to.

12:37:27 17 Q. What would be the reasons that you
12:37:29 18 would want to verify the identification?

12:37:31 19 MS. HUGGINS: Form.

12:37:31 20 THE WITNESS: Maybe his -- who he's claiming
12:37:36 21 to be is relevant to the scene that we were at.
12:37:40 22 Maybe -- for example, if he told us that
12:37:45 23 Mr. Kistner was his father, maybe I didn't -- or,

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12:37:47 1 you know, no one needed to really look into him
12:37:53 2 being who he says. Like it's: Okay. You're his
12:37:57 3 son. We believe you.

12:37:59 4 BY MR. DAVENPORT:

12:38:01 5 Q. Was anything said to him about where
12:38:03 6 his father was going or how his father was doing?

12:38:06 7 A. I don't -- I don't remember.

12:38:07 8 Q. Okay. Was there anything that was said
12:38:11 9 to this individual, whether he could go speak to
12:38:14 10 his father or not?

12:38:18 11 Would there be any reason why a police
12:38:20 12 officer would allow a son to speak with his
12:38:22 13 officer? I -- I got --

12:38:23 14 MS. HUGGINS: Form. Now that's two
12:38:26 15 questions in a row.

12:38:27 16 THE WITNESS: If -- if I was present for
12:38:28 17 that conversation, I don't remember. Sometimes we
12:38:32 18 do let people speak to subjects in the back of our
12:38:38 19 patrol vehicle, other times we don't.

12:38:40 20 BY MR. DAVENPORT:

12:38:40 21 Q. Do you remember if you let this
12:38:41 22 individual speak to the individual in the back of
12:38:42 23 your police vehicle?

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12:38:43 1 A. It was never asked of me, that
12:38:45 2 I remember. If it was asked of me, I deferred
12:38:50 3 to senior officers.

12:38:53 4 Q. Do you have any reason to believe that
12:38:54 5 this individual did speak to the -- Mr. Kistner in
12:38:57 6 the back of the police vehicle?

12:38:59 7 A. I don't want to speculate if he did or
12:39:02 8 didn't. It was never anything that was mentioned
12:39:06 9 to me that I remember, and I would have deferred.

12:39:08 10 Q. Okay. Do you remember seeing that
12:39:10 11 individual at all after leaving Schmarbeck that
12:39:16 12 day?

12:39:16 13 A. I don't think I've had a run-in with
12:39:20 14 Mr. Kistner or his son since that day.

12:39:21 15 MR. DAVENPORT: Okay.

12:39:21 16 (Discussion off the record.)

12:39:21 17 BY MR. DAVENPORT:

12:39:35 18 Q. So when you say run-ins with Mr. Kistner,
12:39:38 19 does that pertain to just calls, or does that
12:39:41 20 pertain to any times that you may have seen him on
12:39:43 21 the street when you weren't necessarily responding
12:39:45 22 to a call?

12:39:46 23 MS. HUGGINS: Form.

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12:39:46 1 THE WITNESS: What I mean by that is -- by
12:39:49 2 a run-in is I don't think I've ever seen him
12:39:52 3 outside of that call, period. I don't think I've
12:39:57 4 ever seen him in a store, no other calls. Yeah,
12:40:03 5 I don't think I've ever seen him or his son since.

12:40:07 6 BY MR. DAVENPORT:

12:40:08 7 Q. Now, did you have any conversations
12:40:09 8 with anybody about this incident on January 1st of
12:40:15 9 2017?

12:40:15 10 MS. HUGGINS: Well --

12:40:16 11 THE WITNESS: Her and --

12:40:18 12 MS. HUGGINS: He's asking outside of me.

12:40:20 13 THE WITNESS: Oh, outside of -- Karl and
12:40:24 14 Jenny and Lauren.

12:40:28 15 BY MR. DAVENPORT:

12:40:28 16 Q. Did you ever have any conversations
12:40:29 17 with your lieutenant, McHugh?

12:40:31 18 A. I did not.

12:40:32 19 Q. Okay. Do you know if anybody had
12:40:34 20 conversations with Lieutenant McHugh?

12:40:35 21 A. I believe someone on scene made
12:40:38 22 a phone call to him, but I don't remember which
12:40:40 23 officer that was.

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12:40:44 1 Q. Do you remember, besides January 1st of
12:40:47 2 2017, any of the officers that were on scene having
12:40:50 3 a conversation with Lieutenant McHugh about the
12:40:52 4 incident on January 1st of 2017?

12:40:53 5 A. Not that I was present for.

12:40:54 6 Q. What about other senior officers? Any
12:40:58 7 captains or anybody higher than lieutenant?

12:41:01 8 A. Definitely not while I was present for.

12:41:04 9 Q. Have you ever been investigated by
12:41:05 10 internal affairs?

12:41:06 11 MS. HUGGINS: Form, and 50-a objection, to
12:41:10 12 the extent that applies. You can answer.

12:41:11 13 THE WITNESS: Okay. No suspensions or
12:41:14 14 anything like that, no.

12:41:15 15 BY MR. DAVENPORT:

12:41:16 16 Q. Have you ever been -- had a discussion
12:41:18 17 with internal affairs about January 1st of 2017?

12:41:21 18 A. No.

12:41:24 19 Q. When was the first time that you were
12:41:27 20 aware that a lawsuit had been commenced against
12:41:31 21 you?

12:41:31 22 A. I believe I saw it on the news.

12:41:32 23 Q. That was the first time?

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12:41:33 1 A. Yes.

12:41:34 2 Q. Did you receive a summons or a complaint?

12:41:38 3 A. I received some type of packet that I was
12:41:43 4 served with that I gave to our union.

12:41:46 5 Q. Okay. When, approximately, did you
12:41:50 6 receive that packet?

12:41:50 7 A. Or I'm -- I'm sorry. I received the
12:41:52 8 packet before I saw it on the news, but yeah, I'm
12:41:55 9 sorry, yeah, I remember, yeah, I received the
12:41:59 10 packet first. That's when I knew that this whole
12:42:02 11 thing was taking place, and then I saw it on -- on
12:42:05 12 the news.

12:42:05 13 Q. Okay. Okay.

12:42:06 14 A. Yeah.

12:42:07 15 Q. Did you happen to look at any of the
12:42:09 16 materials that were in that packet?

12:42:10 17 A. I read it over with a union rep.

12:42:12 18 Q. Okay. When, approximately, did that
12:42:15 19 take place?

12:42:17 20 A. I don't -- I don't remember exactly
12:42:21 21 when I was served with those papers.

12:42:23 22 Q. Okay. So if you were served with those
12:42:26 23 papers in 2018, would it have been during that year

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12:42:29 1 that you sat down with the union rep?

12:42:34 2 A. I -- like I said, I don't remember the
12:42:36 3 date that I was served the --

12:42:40 4 Q. Sure.

12:42:41 5 A. -- the papers. I either gave the union
12:42:43 6 rep the papers the day of or the day after I was
12:42:46 7 served with those papers.

12:42:47 8 Q. Okay. And when you gave the papers to
12:42:50 9 that union rep, did you sit down that day?

12:42:53 10 A. Yeah.

12:42:54 11 Q. Okay. What did the union rep say to
12:42:57 12 you?

12:42:57 13 A. He said he -- he gave me her phone
12:43:00 14 number and that someone would be contacting me
12:43:03 15 about it, but he didn't -- he didn't really say --
12:43:06 16 say much.

12:43:07 17 Q. Okay. Now, did you reach out to
12:43:10 18 Ms. Huggins, or did Ms. Huggins reach out to you
12:43:12 19 first?

12:43:13 20 MS. HUGGINS: Well, form. I -- I don't know
12:43:15 21 why you're inquiring into contact between counsel
12:43:17 22 and client.

12:43:18 23 MR. DAVENPORT: Well, I just want to know,

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12:43:19 1 you know, after he received these papers, you know,
12:43:21 2 what were the next steps that you took?

12:43:23 3 Did you reach out to your attorney, or did
12:43:25 4 you wait for your attorney to contact you?

12:43:27 5 MS. HUGGINS: Again --

12:43:27 6 MR. DAVENPORT: You -- you can answer,
12:43:28 7 because I'm not asking what the substance was.
12:43:30 8 I'm just asking when you contacted -- whether you
12:43:33 9 contacted Ms. Huggins or whether she contacted you.

12:43:36 10 That's not attorney-compliant privilege.
12:43:38 11 I'm just merely asking when he contacted you or you
12:43:41 12 contacted him. I don't want to know --

12:43:41 13 MS. HUGGINS: I'm asking for the basis of
12:43:43 14 inquiry into contact with counsel, and I'm allowed
12:43:46 15 to ask the basis of --

12:43:46 16 MR. DAVENPORT: Are you going -- are you
12:43:47 17 going to direct him to not answer the question?

12:43:48 18 MS. HUGGINS: I just inquired the basis of
12:43:50 19 your question. That's what --

12:43:53 20 MR. DAVENPORT: Well, I'm asking because --

12:43:53 21 MS. HUGGINS: -- I just did.

12:43:53 22 THE REPORTER: Don't talk over each other,
12:43:53 23 please.

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12:43:53 1 MR. DAVENPORT: Okay.

12:43:53 2 So what I'm asking is: Why -- or if he
12:43:57 3 received these papers and if he discussed them with
12:44:00 4 the union rep, what was his concern level?

12:44:02 5 I want to know his concern level with what
12:44:04 6 happened.

12:44:04 7 MS. HUGGINS: So that was not your question.

12:44:06 8 MR. DAVENPORT: Well, I know, it's --
12:44:06 9 it's --

12:44:06 10 MS. HUGGINS: You can pose --

12:44:07 11 MR. DAVENPORT: -- different, but --

12:44:08 12 MS. HUGGINS: You can pose your question to
12:44:09 13 him.

12:44:09 14 MR. DAVENPORT: It's certainly relevant to
12:44:12 15 that. It's relevant to that inquiry.

12:44:14 16 MS. HUGGINS: Sir, I objected to a totally
12:44:16 17 different question that veers on attorney-client
12:44:19 18 privilege. You have now posed a different question.

12:44:21 19 You can ask that of the witness, but
12:44:23 20 I am allowed to ask the basis of your question for
12:44:26 21 an objection. That's -- that's all I'm doing.
12:44:28 22 You may ask.

12:44:28 23 BY MR. DAVENPORT:

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12:44:29 1 Q. You can answer.

12:44:29 2 A. I received a court notification
12:44:32 3 by the court liaison.

12:44:34 4 Q. Okay. So when did you receive that
12:44:36 5 court notification?

12:44:37 6 A. There would be records of it somewhere,
12:44:40 7 but no, I don't -- I don't remember.

12:44:42 8 Q. Okay.

12:44:43 9 A. There's definitely records of it at
12:44:46 10 City Court or something.

12:44:47 11 Q. Okay. So now when you reached out to
12:44:49 12 that court liaison --

12:44:50 13 A. No, no. They --

12:44:52 14 Q. Or they -- they reached out to you.

12:44:54 15 A. Yeah.

12:44:54 16 Q. Okay. Or when you got notification of
12:44:55 17 that court liaison, had you contacted an attorney
12:44:58 18 at that point?

12:44:58 19 A. No.

12:44:59 20 Q. Okay.

12:45:00 21 A. No.

12:45:00 22 Q. Was it after you received that
12:45:02 23 notification?

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12:45:03 1 MS. HUGGINS: Form.

12:45:04 2 BY MR. DAVENPORT:

12:45:05 3 Q. That you contacted an attorney?

12:45:06 4 A. I never contacted an attorney.

12:45:07 5 Q. Okay. Okay. So did you watch the

12:45:14 6 video when you received that packet?

12:45:16 7 A. No. The video wasn't provided at that
12:45:19 8 time.

12:45:20 9 Q. Okay. You didn't receive any exhibits
12:45:25 10 or anything else besides that initial complaint in
12:45:28 11 that packet?

12:45:29 12 A. No. The packet was -- it was pretty
12:45:35 13 thick. There was like a list of -- a list of
12:45:39 14 charges in there. If there were -- if there were
12:45:41 15 exhibits in there, I don't remember -- I don't
12:45:45 16 remember reading -- reading that or -- or -- or it
12:45:48 17 being a topic of discussion with the union rep.

12:45:51 18 Q. Okay. What kinds of things did you
12:45:56 19 discuss with the union rep about the complaint?

12:45:57 20 A. It was along the lines of me handing
12:46:00 21 him the packet. He flipped through it a couple
12:46:05 22 times and just said, just wait for court to notify
12:46:09 23 you. And then that's what I did.

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12:46:13 1 Q. Were you ever -- did you ever have
12:46:15 2 another discussion with that union rep?

12:46:17 3 A. No.

12:46:25 4 Q. How long, approximately, was that
12:46:27 5 initial meeting with the union rep?

12:46:32 6 A. It was a pretty informal thing. It
12:46:37 7 wasn't long. Five minutes or so for him to just
12:46:41 8 skim through it.

12:46:41 9 Q. Okay.

12:46:43 10 A. And I went on my way.

12:46:45 11 Q. Have you had to meet with that union
12:46:46 12 rep or any other union reps for any other lawsuits
12:46:49 13 that were commenced against you?

12:46:50 14 A. No.

12:46:51 15 Q. Okay. Is this the only lawsuit that
12:46:54 16 has ever been commenced against you?

12:46:56 17 A. Yeah. Yes.

12:46:57 18 Q. Okay. When was the next time that you
12:46:58 19 spoke to somebody about this lawsuit?

12:47:02 20 A. Whenever we have court notifications to
12:47:05 21 talk to her. I might have talked to Karl about it
12:47:15 22 two or three times, but it's not a huge discussion.

12:47:21 23 Q. Okay.

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12:47:22 1 A. You know, me and Karl are on two
12:47:25 2 different shifts, and we talk about two different
12:47:28 3 things.

12:47:28 4 Q. Okay. So when you say two different
12:47:31 5 shifts, are you referring to like maybe --

12:47:33 6 A. I'm -- I'm sorry. He's on -- he's on
12:47:35 7 day shift and I'm on afternoons.

12:47:36 8 Q. Okay.

12:47:37 9 A. So we don't -- we don't really cross
12:47:39 10 paths as much.

12:47:41 11 Q. Sure.

12:47:41 12 So after that first initial 16 weeks, did
12:47:44 13 you automatically go to the afternoon shift?

12:47:46 14 A. Yes.

12:47:46 15 Q. Okay. So the only time that you would
12:47:50 16 have seen Karl Schultz, would that be typically
12:47:52 17 during briefing --

12:47:53 18 MS. HUGGINS: Form.

12:47:54 19 BY MR. DAVENPORT:

12:47:54 20 Q. -- before you started the afternoon
12:47:55 21 shift?

12:47:55 22 A. No. I went to -- so when he was
12:48:01 23 working, I was on my off days, and then when I was

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12:48:05 1 working, he was on his off days, so I didn't really
12:48:08 2 see him too much in Charlie.

12:48:11 3 He transferred to Bravo, and then I went to
12:48:13 4 Delta for a little bit and came back, and he was
12:48:15 5 still in Bravo.

12:48:16 6 Q. Okay.

12:48:17 7 A. And now we're -- we're both in Bravo,
12:48:19 8 and I don't see him too often because he's usually
12:48:22 9 on calls when I'm in briefing.

12:48:24 10 Q. Okay. Were you involved in the
12:48:26 11 criminal proceedings at all against Mr. Kistner?

12:48:32 12 A. I don't remember if I was notified to
12:48:35 13 go to court for that.

12:48:36 14 Q. Okay. Which officers are typically
12:48:40 15 notified to go to court for criminal proceedings?

12:48:42 16 A. The arresting and assisting officers.
12:48:44 17 It could also be whoever is on the case history,
12:48:49 18 but they don't always notify everyone in.

12:48:53 19 Q. Okay.

12:48:55 20 A. And I don't really know how that's
12:48:57 21 determined.

12:48:57 22 Q. Okay.

12:48:58 23 A. But definitely the arresting officer.

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12:49:01 1 Q. What would be the circumstances where
12:49:03 2 an assisting officer would be required to go into
12:49:07 3 court for a court proceeding -- a criminal
12:49:09 4 proceeding?

12:49:09 5 MS. HUGGINS: Form.

12:49:12 6 THE WITNESS: I don't know the requirements
12:49:15 7 for an assisting officer because on -- on an arrest
12:49:20 8 form, there's the arresting officer and assisting
12:49:23 9 officer, and they've gone sometimes and not
12:49:27 10 notified the assisting officer and notified way
12:49:31 11 down the case history list, other people. So I'm
12:49:34 12 not -- I'm not sure how that is determined.

12:49:36 13 BY MR. DAVENPORT:

12:49:36 14 Q. Okay. Now, after you received that
12:49:42 15 initial packet, when did you first watch the video
12:49:47 16 that was provided as part of the complaint?

12:49:53 17 A. One of the times I met with my
12:49:55 18 attorney, and I don't know which time that was.

12:49:57 19 Q. Okay. Okay. Do you know if it was
12:50:01 20 shortly after the lawsuit was commenced?

12:50:04 21 A. I don't know.

12:50:05 22 Q. Okay. Do you know, was it within
12:50:07 23 a year of the lawsuit being commenced?

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12:50:15 1 A. I don't remember the time that my first
12:50:18 2 court notification was with my attorney and the
12:50:22 3 time that I received the packet.

12:50:26 4 Q. How do you receive those court
12:50:28 5 notifications?

12:50:28 6 A. They're given to our -- our stationhouse,
12:50:31 7 and then a report technician will contact us via
12:50:36 8 phone or -- I'm sorry -- there's -- depending on
12:50:41 9 the stationhouse, they might just put your
12:50:44 10 notification in your -- your mailbox. Other ones
12:50:46 11 it's in a binder and you have to check yourself.

12:50:48 12 Q. Okay. Do you know where those court
12:50:51 13 notifications come from?

12:50:52 14 A. The Court Liaison Bureau.

12:50:54 15 Q. Okay. Do you have records of those
12:50:57 16 court notifications from the liaison?

12:51:01 17 A. I usually throw mine out once the court
12:51:05 18 date is over. I mean, they -- I don't know if they
12:51:11 19 keep it or not or how long they would keep it.

12:51:13 20 Q. Do you know, is the court liaison, is
12:51:17 21 that somebody affiliated with the courts or the
12:51:18 22 Buffalo Police Department?

12:51:21 23 A. Courts, and then it goes to BPD.

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12:51:23 1 Q. Okay. Do you know who that individual
12:51:25 2 is for the court liaison?

12:51:27 3 A. I don't, actually.

12:51:28 4 Q. Okay. How often did you receive
12:51:32 5 notifications from the court liaison?

12:51:33 6 A. It depends on how frequently you arrest
12:51:36 7 or you're -- you're needed in -- in court.

12:51:40 8 Q. Okay. Pertaining to this lawsuit,
12:51:45 9 how -- how often were you notified by the court
12:51:47 10 liaison?

12:51:49 11 MS. HUGGINS: Form. And, again, to the
12:51:52 12 extent that you're going into contact he's had with
12:51:55 13 counsel, I mean --

12:51:55 14 MR. DAVENPORT: I'm not.

12:51:56 15 MS. HUGGINS: -- that would be privileged.

12:51:57 16 MR. DAVENPORT: Well, no. Not --

12:51:58 17 MS. HUGGINS: He's already indicated that
12:52:00 18 that's --

12:52:00 19 MR. DAVENPORT: Not the times that he's had
12:52:01 20 contact with you. What is said during that contact
12:52:03 21 is absolutely privileged. I am not asking that.

12:52:05 22 I'm just simply asking: Pertaining to this
12:52:08 23 lawsuit, how many notifications did you receive

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12:52:10 1 from the court liaison?

12:52:11 2 And if you want to argue that that's
12:52:12 3 privileged, you can make that argument, but he can
12:52:15 4 answer it, and then you can make that objection
12:52:17 5 later, and it can be struck from the record.

12:52:19 6 So you may answer.

12:52:20 7 **MS. HUGGINS:** Well, that's not how
12:52:22 8 objections work. If something is privileged,
12:52:24 9 that's an objection that is preserved and he would
12:52:27 10 not answer during a deposition.

12:52:28 11 **MR. DAVENPORT:** Are you going to direct him
12:52:29 12 to not answer?

12:52:30 13 **MS. HUGGINS:** Sir, you can ask that
12:52:32 14 question, but I object to the -- to the extent that
12:52:35 15 you're veering towards that.

12:52:37 16 He's already indicated that court liaison is
12:52:40 17 the mechanism by which counsel directs him to come
12:52:44 18 meet with him.

12:52:45 19 **MR. DAVENPORT:** And I just asked him how
12:52:47 20 many times he received that notification from the
12:52:48 21 court liaison for this case.

12:52:52 22 You can answer.

12:52:55 23 **MS. HUGGINS:** You may answer.

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12:52:56 1 THE WITNESS: I think two or three.

12:52:57 2 BY MR. DAVENPORT:

12:52:58 3 Q. Okay. Would those have been the only
12:53:01 4 times that you would have met with Ms. Huggins?

12:53:04 5 A. Yep. Yes.

12:53:05 6 Q. Okay. When, approximately, was that
12:53:09 7 first notification?

12:53:10 8 Was it recently or was it a while ago?

12:53:12 9 MS. HUGGINS: Form. Asked and answered.

12:53:14 10 THE WITNESS: No. That would have been
12:53:16 11 a while ago.

12:53:17 12 BY MR. DAVENPORT:

12:53:18 13 Q. Like more than a year ago?

12:53:19 14 A. I don't -- I don't remember.

12:53:21 15 Q. Okay. When was the second time that
12:53:26 16 you received that notification?

12:53:29 17 A. I don't -- I don't remember -- I don't
12:53:38 18 remember. I know I saw her last week --

12:53:40 19 Q. Okay.

12:53:41 20 A. -- for something.

12:53:41 21 Q. Did you receive a notification from the
12:53:43 22 court liaison?

12:53:44 23 A. Yeah.

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12:53:44 1 Q. Okay. So one of -- one of the three
12:53:46 2 times that you received a notification was for this
12:53:48 3 deposition?

12:53:49 4 A. Like I -- like I said, I don't remember
12:53:51 5 if it was two or three times, but I know I saw her
12:53:55 6 like last week, yeah.

12:53:56 7 Q. Okay. When was the first time that you
12:53:59 8 watched the video with your attorney or with
12:54:04 9 anybody else affiliated with the City of Buffalo
12:54:08 10 Law Department?

12:54:14 11 A. I think it was the -- I think it was
12:54:17 12 the first time.

12:54:18 13 Q. Okay. Now, at that time, do you know
12:54:28 14 if the second notification that you received, did
12:54:33 15 you have to sign a verification at all?

12:54:37 16 MS. HUGGINS: Form.

12:54:37 17 THE WITNESS: What do you mean? That
12:54:39 18 I showed up to court?

12:54:40 19 BY MR. DAVENPORT:

12:54:41 20 Q. For the interrogatories that you
12:54:42 21 referred to earlier, the thicker packet that you
12:54:45 22 reviewed that you said that, you know, wasn't one
12:54:48 23 of the four documents in front of you?

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12:54:56 1 I'm sorry.

12:54:56 2 MS. HUGGINS: There might just be

12:54:58 3 confusion --

12:54:58 4 MR. DAVENPORT: Yeah.

12:54:58 5 THE WITNESS: Yeah.

12:54:58 6 MS. HUGGINS: -- between the complaint and

12:54:59 7 interrogatories.

12:55:00 8 MR. DAVENPORT: No. No. I know. I know.

12:55:00 9 MS. HUGGINS: Yeah.

12:55:01 10 MR. DAVENPORT: I understand.

12:55:01 11 THE WITNESS: I don't --

12:55:02 12 MR. DAVENPORT: All right. So --

12:55:02 13 MS. HUGGINS: It's your examination, but,

12:55:04 14 I mean, if I can help clear it up, I will.

12:55:08 15 MR. DAVENPORT: Here you go.

12:55:11 16 Can we have this exhibit marked, please?

12:55:11 17 The following was marked for Identification:

18 EXH. 23 Verification page

12:55:11 19 BY MR. DAVENPORT:

12:55:53 20 Q. So I'm now showing you what has been

12:55:56 21 marked as Exhibit 23. Do you recognize that

12:55:58 22 document?

12:56:03 23 A. Yes.

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12:56:03 1 Q. Okay. Do you recall, was that document
12:56:09 2 given to you through the mail?

12:56:14 3 Was it given to you in person?

12:56:15 4 A. In person.

12:56:15 5 Q. Okay. And who gave you that document?

12:56:18 6 A. I don't know the dude's name. I've
12:56:23 7 never --

12:56:24 8 Q. Okay.

12:56:24 9 A. Yeah.

12:56:24 10 Q. Okay.

12:56:24 11 MS. HUGGINS: I think there's confusion
12:56:26 12 about what we're talking about right now.

12:56:27 13 MR. DAVENPORT: Sure. No. That -- no.
12:56:28 14 I understand. But he said that he recalled that
12:56:29 15 document, and he said he has seen it and that he
12:56:32 16 received it from some individual, so I'm just
12:56:34 17 asking questions about that document.

12:56:37 18 THE WITNESS: Was this part -- this was part
12:56:40 19 of the packet, right, that I --

12:56:41 20 MS. HUGGINS: Yeah, I think there's
12:56:44 21 confusion.

12:56:44 22 THE WITNESS: -- that I was served?

12:56:44 23 MS. HUGGINS: He's confused about the

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12:56:45 1 summons and complaint --

12:56:45 2 MR. DAVENPORT: I'll -- I'll clarify it.

12:56:46 3 MS. HUGGINS: -- versus this.

12:56:46 4 MR. DAVENPORT: I'll clarify it. Thank you.

12:56:49 5 So this exhibit has been marked as Exhibit

12:56:51 6 number 13. Do you recognize that document?

12:56:56 7 THE WITNESS: Yeah, I believe this is what

12:56:58 8 I was served with at my front doorstep, I think.

12:57:02 9 BY MR. DAVENPORT:

12:57:02 10 Q. Okay. So do you see in bold lettering

12:57:08 11 what that says?

12:57:09 12 A. Right here?

12:57:10 13 Q. Yes.

12:57:11 14 A. Yeah. Answer to first interrogatories

12:57:13 15 to defendants.

12:57:14 16 Q. And, Mr. Moriarity, are you familiar

12:57:17 17 with what a complaint is?

12:57:19 18 A. Yeah. Someone makes a complaint on

12:57:22 19 you.

12:57:22 20 Q. Like a -- a lawsuit complaint --

12:57:24 21 A. Okay.

12:57:24 22 Q. -- is part of a legal proceeding; do

12:57:28 23 you know what that is?

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12:57:28 1 A. If you want to explain it to me so

12:57:31 2 I understand --

12:57:31 3 Q. Yeah. Yeah.

12:57:31 4 A. -- better.

12:57:32 5 Q. Of course. Of course.

12:57:33 6 All right. So a legal complaint that
12:57:34 7 initiates the action, that would have been what you
12:57:37 8 had received on your front doorstep, that would
12:57:39 9 have been served to you, correct?

12:57:40 10 A. Okay. Yeah.

12:57:41 11 Q. So now what I'm asking is: These are
12:57:44 12 called interrogatories, so these probably would
12:57:48 13 have been a second document, a thicker document
12:57:51 14 that you would have reviewed.

12:57:52 15 A. Oh, okay. Okay.

12:57:54 16 Q. So now I guess what my question is:
12:57:58 17 Did you receive that thick packet and then later
12:58:02 18 receive another criminal -- or legal document that
12:58:06 19 kind of looks something like this?

12:58:09 20 MS. HUGGINS: Form.

12:58:09 21 THE WITNESS: I received this later then.

12:58:13 22 BY MR. DAVENPORT:

12:58:13 23 Q. Okay. So it would have been something

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12:58:14 1 that was received later?

12:58:15 2 A. Yeah.

12:58:16 3 Q. Okay. Now, was that received with this
12:58:19 4 verification?

12:58:22 5 MS. HUGGINS: Form.

12:58:23 6 THE WITNESS: That, I don't remember.

12:58:25 7 I mean, I -- I know that this is my signature.

12:58:28 8 BY MR. DAVENPORT:

12:58:28 9 Q. Okay.

12:58:28 10 A. And I'm not disputing that.

12:58:31 11 Q. No. No. Of course. Of course.

12:58:32 12 A. I don't remember when --

12:58:33 13 Q. Do you remember if this verification
12:58:34 14 was given with anything else? Any other documents
12:58:38 15 that would have been handed to you at that time?

12:58:41 16 MS. HUGGINS: Form.

12:58:41 17 THE WITNESS: I -- no, I -- I don't -- I
12:58:49 18 don't remember.

12:58:49 19 BY MR. DAVENPORT:

12:58:49 20 Q. Okay. I'm going to direct your
12:58:55 21 attention to page 4.

12:58:58 22 A. Page 4?

12:58:59 23 Q. Or let's see here.

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12:59:03 1 Excuse me. Page 5. And I want you to go to
12:59:06 2 demand number 2.

12:59:07 3 Now, that -- that interrogatory says,
12:59:10 4 identify the police officers shown in the video
12:59:13 5 attached as Exhibit A to the complaint.

12:59:14 6 Now, if I represent to you that Exhibit A to
12:59:17 7 the complaint is those four video segments that you
12:59:19 8 said that you have watched, are you able to
12:59:23 9 identify who those police officers are by watching
12:59:27 10 the video?

12:59:28 11 MS. HUGGINS: Form.

12:59:30 12 THE WITNESS: Some of them, yeah.

12:59:32 13 BY MR. DAVENPORT:

12:59:32 14 Q. Okay. Who were you able to identify
12:59:35 15 when watching the video?

12:59:37 16 MS. HUGGINS: Form.

12:59:37 17 THE WITNESS: Karl. And then the other two,
12:59:43 18 Lauren and Jenny, I would get confused.

12:59:45 19 BY MR. DAVENPORT:

12:59:45 20 Q. Okay. But you knew that they were
12:59:48 21 there?

12:59:48 22 A. I knew that they were there, yeah.

12:59:50 23 Q. Okay. Did you know -- did you watch --

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12:59:52 1 there was a fourth video segment that was provided?

12:59:54 2 A. I don't remember which video was the
12:59:56 3 fourth.

12:59:57 4 Q. Okay. Did you watch a video segment
12:59:59 5 where there was a fifth police officer on scene?

13:00:01 6 A. Yes.

13:00:01 7 Q. And did you know, when watching that
13:00:04 8 video, who that individual officer was?

13:00:06 9 A. No. I -- I -- I forgot who showed up
13:00:09 10 on scene.

13:00:09 11 Q. Okay. Okay.

13:00:10 12 A. And when the video was replayed, it was
13:00:14 13 also what the -- the department refers to as
13:00:17 14 double-up day, so both shifts are working, and
13:00:21 15 I don't remember who all was on those shifts
13:00:23 16 because people get promoted or transferred.

13:00:27 17 Q. Okay. Now, have you later learned who
13:00:28 18 that fifth individual was?

13:00:30 19 A. Yes.

13:00:30 20 Q. Was that individual's name David
13:00:32 21 Santana?

13:00:33 22 A. Yes.

13:00:33 23 Q. Now, is that somebody that you had

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13:00:35 1 worked with before?

13:00:37 2 A. Yeah, he was. And like I said, I'm
13:00:40 3 about a week old on here.

13:00:42 4 Q. Okay.

13:00:42 5 A. So I had just basically met him.

13:00:46 6 Q. Okay.

13:00:48 7 A. So I -- I did forget that he was even
13:00:51 8 on scene, but then looking at the video, I mean, it
13:00:55 9 kind of took a little bit to realize it was him.

13:01:01 10 Q. So David Santana, is that somebody that
13:01:05 11 you worked with after the incident on January 1st
13:01:08 12 of 2017?

13:01:08 13 A. Only the 16 weeks --

13:01:10 14 Q. Okay.

13:01:10 15 A. -- that I worked with him.

13:01:12 16 Q. Okay. So he would have been somebody
13:01:16 17 that worked on a different shift or a different --

13:01:18 18 A. He -- he would have been the same
13:01:20 19 shift.

13:01:21 20 Q. He would have been the same shift, but
13:01:23 21 would he also work the same days that you work?

13:01:26 22 A. The same, yep.

13:01:26 23 Q. Okay.

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13:01:26 1 A. Same days.

13:01:28 2 Q. Okay. Do you recall from the video
13:01:30 3 whether he was driving with somebody or whether he
13:01:32 4 was by himself?

13:01:32 5 A. I don't.

13:01:33 6 Q. Okay. If I represented to you that he
13:01:37 7 was driving by himself, would you have any reason
13:01:39 8 to dispute that?

13:01:40 9 MS. HUGGINS: Form.

13:01:43 10 THE WITNESS: No, but again, I mean, I don't
13:01:45 11 know what other people were doing.

13:01:47 12 BY MR. DAVENPORT:

13:01:48 13 Q. No. Sure. Sure.

13:01:49 14 A. Yeah.

13:01:49 15 Q. Would there be any reason why he would
13:01:51 16 be driving a Dodge Charger or a Charger rather than
13:01:56 17 the Chevy Tahoe that you and the other car were
13:02:01 18 driving?

13:02:02 19 A. Could be a number of reasons. I don't
13:02:03 20 know what the car situation was back then.

13:02:06 21 MR. DAVENPORT: Okay. Okay. So if we could
13:02:11 22 just go to the video.

13:02:12 23 And then we can go off the record really

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13:02:14 1 quickly.

2 THE VIDEOGRAPHER: Sure.

3 MR. DAVENPORT: Okay.

4 THE WITNESS: And can we take a break?

5 MR. DAVENPORT: Yeah. Yeah. Of course.

6 Of course.

7 (A recess was then taken at 1:02 p.m.)

13:16:28 8 (On the record at 1:16 p.m.)

13:16:28 9 MR. DAVENPORT: So, now, Mr. Moriarity, we
13:16:31 10 are going to watch the third video segment that has

13:16:33 11 been provided by the plaintiff during discovery.

13:16:36 12 The last four digits of that video are 2529.

13:16:36 13 Now can we please direct the camera towards
13:16:36 14 the TV screen?

13:16:52 15 Perfect. Thank you.

13:16:54 16 So before we start the video, where is
13:16:58 17 the -- is there an individual that is standing in
13:17:00 18 the street?

13:17:00 19 THE WITNESS: Yes.

13:17:02 20 BY MR. DAVENPORT:

13:17:02 21 Q. Where is that individual standing?

13:17:05 22 MS. HUGGINS: Form.

13:17:07 23 THE WITNESS: From the video, in the middle

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13:17:10 1 of the street.

13:17:10 2 BY MR. DAVENPORT:

13:17:10 3 Q. Okay. Is he standing in front of your
13:17:13 4 police vehicle or the other police vehicle?

13:17:19 5 A. It looks like from the video's
13:17:21 6 perspective, in front of my vehicle.

13:17:27 7 Q. Okay. What direction is this
13:17:28 8 individual facing?

13:17:29 9 A. South.

13:17:30 10 Q. Okay. And is that just based off of
13:17:33 11 your recollection of Schmarbeck Avenue, or is that
13:17:36 12 based off of any reference point on the video that
13:17:41 13 you know that that direction he's facing is south?

13:17:43 14 A. No. It's based off of my knowledge of
13:17:45 15 C District streets.

13:17:46 16 Q. Okay. And what direction is your car
13:17:49 17 facing?

13:17:50 18 A. North.

13:17:51 19 MR. DAVENPORT: Okay. Now I'm going to play
13:17:54 20 the video.

13:18:08 21 (Video clip played.)

13:18:08 22 BY MR. DAVENPORT:

13:18:09 23 Q. Now, what direction was that individual

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13:18:12 1 walking for the first three seconds of the video?

13:18:19 2 A. South.

13:18:20 3 Q. Okay. And your car is moving or is it
13:18:22 4 stationary?

13:18:23 5 A. Stationary, still.

13:18:24 6 Q. Okay. So now what would be your
13:18:27 7 typical thing that you would do next, if you saw an
13:18:31 8 individual that was walking towards your police
13:18:33 9 vehicle and you were still stopped and -- and
13:18:36 10 hadn't been in motion?

13:18:38 11 MS. HUGGINS: Form.

13:18:38 12 THE WITNESS: Well, at the time, you
13:18:40 13 don't -- you can't say if you know that he's
13:18:42 14 walking towards my police vehicle or towards the
13:18:45 15 sidewalk or, you know, behind my police vehicle,
13:18:47 16 but I'm thinking officer safety.

13:18:52 17 BY MR. DAVENPORT:

13:18:52 18 Q. Okay.

13:18:52 19 A. But at that -- at that time, you know,
13:18:53 20 years ago, I don't remember what I was thinking.

13:18:55 21 Q. Okay. But the individual did take
13:19:01 22 a few steps, and he did -- he was closer to your
13:19:05 23 police vehicle than he was at the beginning of the

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13:19:08 1 video, correct?

13:19:08 2 A. Yes.

13:19:09 3 Q. Okay. Now -- now, we're still on three
13:19:23 4 seconds of the video. Your video -- your car has
13:19:26 5 gone into motion at this point, correct? It
13:19:28 6 started moving forward?

13:19:29 7 A. Yes.

13:19:29 8 Q. And where is the individual at this
13:19:32 9 point with reference to your police vehicle?

13:19:37 10 A. The driver's side, in between my truck
13:19:41 11 and the grass.

13:19:43 12 Q. Okay. Now, what I want you to do is
13:19:46 13 I want you to make reference of the time stamp, and
13:19:49 14 I don't want you to verify its accuracy. I just
13:19:52 15 want you to look at what the time is.

13:19:55 16 Would you agree that is 10:25:32 when your
13:19:58 17 car first starts in motion?

13:20:00 18 MS. HUGGINS: Form.

13:20:03 19 THE WITNESS: Based on this video and the
13:20:06 20 numbers that are on the screen, it says 10:25:32.

13:20:12 21 BY MR. DAVENPORT:

13:20:12 22 Q. Okay. Now, focusing on your car --

13:20:18 23 A. You said focusing on my car?

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13:20:20 1 Q. Yes. Oh, I'm sorry. We'll -- we'll
13:20:22 2 play it again. I'll start it from three seconds.

13:20:27 3 Well, we'll start it from three seconds.

13:20:27 4 THE WITNESS: Yeah.

13:20:27 5 (Video clip played.)

13:20:27 6 BY MR. DAVENPORT:

13:20:29 7 Q. Now, focusing on your car, I want you
13:20:31 8 to tell me when it is off the screen. And I'll do
13:20:35 9 my best to stop the video when your car is out of
13:20:39 10 the scene.

13:20:39 11 MS. HUGGINS: Form.

13:20:40 12 THE WITNESS: All right.

13:20:45 13 BY MR. DAVENPORT:

13:20:46 14 Q. Now, do you see on that top time stamp
13:20:48 15 what the time is?

13:20:50 16 A. Yeah. The top time stamp on the -- the
13:20:54 17 video is 10:25:37.

13:20:57 18 Q. Okay. So 10:25:37.

13:20:59 19 And when you first started in motion, it was
13:21:01 20 10:25:32, correct?

13:21:05 21 A. Yeah.

13:21:05 22 MR. DAVENPORT: Okay. So now what I want
13:21:11 23 you to do -- well, I want to play a second video.

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13:21:11 1 (Discussion off the record.)

13:21:11 2 (Video clip played.)

13:21:11 3 BY MR. DAVENPORT:

13:23:00 4 Q. Now, assuming that these cameras are

13:23:02 5 calibrated where the times are accurately

13:23:04 6 reflecting each other -- they don't have to be

13:23:06 7 accurate in terms of what time it actually is, but

13:23:08 8 just assuming that they're all calibrated together,

13:23:11 9 what is the time stamp in that top video frame

13:23:14 10 right there?

13:23:15 11 MS. HUGGINS: Form.

13:23:16 12 THE WITNESS: Again, don't want to speculate

13:23:21 13 or assume anything, but the time on that screen is

13:23:26 14 10:25:38.

13:23:28 15 BY MR. DAVENPORT:

13:23:28 16 Q. Okay. Now, your car, although it was

13:23:30 17 in the camera view one second before, so that would

13:23:34 18 have been -- well, hold on.

13:23:37 19 Now, would you agree with me that your car

13:23:39 20 is in view at 10:25:36?

13:23:44 21 A. Yes.

13:23:44 22 MR. DAVENPORT: Okay. Now watching the

13:23:46 23 video, would you agree that your car --

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13:23:46 1 (Discussion off the record.)

13:23:46 2 BY MR. DAVENPORT:

13:23:59 3 Q. All right. Now, would you agree that
13:23:59 4 at 10:25:38, your car is outside of the view of the
13:24:03 5 camera?

13:24:04 6 A. Yes.

13:24:04 7 MS. HUGGINS: Form.

13:24:04 8 THE WITNESS: Yes.

13:24:05 9 BY MR. DAVENPORT:

13:24:06 10 Q. Okay. Now, I want you to pay attention
13:24:09 11 and see when the next time your police vehicle is
13:24:13 12 in the view of the camera.

13:24:19 13 A. Okay.

13:24:24 14 Yeah. 44, I think.

13:24:27 15 Q. Okay.

13:24:27 16 A. 10:25:44.

13:24:29 17 Q. Okay. So the time stamp in the top
13:24:32 18 would have been 10:25:44, correct?

13:24:35 19 A. Yeah.

13:24:35 20 MR. DAVENPORT: Okay.

13:24:43 21 (Discussion off the record.)

13:24:43 22 MS. HUGGINS: Do you want to identify the
13:24:44 23 discs that you've played for the record?

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13:24:45 1 MR. DAVENPORT: Sure. So the disc that
13:24:46 2 I just played was Exhibit 12. It is Exhibit A
13:24:51 3 supplement that was provided by the plaintiffs.

13:24:56 4 We are now playing Exhibit 11, which was
13:24:58 5 also provided by the plaintiffs.

13:24:58 6 (Video clip played.)

13:24:58 7 BY MR. DAVENPORT:

13:25:20 8 Q. So now I am playing again what has been
13:25:23 9 marked as Exhibit 11, for purposes of the
13:25:26 10 deposition. The last four digits are 2529.

13:25:31 11 Now, what I want you to pay attention to is
13:25:34 12 when the first instance that you would consider
13:25:37 13 contact has been made between Mr. Kistner and
13:25:41 14 Ms. Velez and Ms. McDermott's vehicle.

13:25:45 15 A. Okay.

13:25:51 16 MS. HUGGINS: Wait for a question.

13:25:52 17 BY MR. DAVENPORT:

13:25:52 18 Q. What time is that?

13:25:54 19 What time -- what's the time stamp in the
13:25:55 20 top part of the video?

13:25:58 21 MS. HUGGINS: Form.

13:25:58 22 THE WITNESS: 10:25:36.

13:26:02 23 BY MR. DAVENPORT:

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13:26:02 1 Q. Okay. Would you agree with me that
13:26:04 2 your vehicle is still in view at that point at
13:26:09 3 10:25:36?

13:26:10 4 A. Yeah. Yes.

13:26:11 5 Q. Okay. Now, would you agree with me
13:26:13 6 that based on the other camera angle, you did not
13:26:17 7 appear back within view until 10:25:44?

13:26:22 8 MS. HUGGINS: Form.

13:26:22 9 THE WITNESS: Yeah, that's correct.

13:26:24 10 BY MR. DAVENPORT:

13:26:24 11 Q. And that would have been eight seconds
13:26:26 12 after initial contact was made between Mr. Kistner
13:26:28 13 and that vehicle, correct?

13:26:29 14 MS. HUGGINS: Form. I'd object to -- we've
13:26:34 15 already indicated that we're not -- the accuracy of
13:26:37 16 these time stamps has not been verified in any way.

13:26:42 17 BY MR. DAVENPORT:

13:26:42 18 Q. You can answer the question.

13:26:43 19 A. Can you -- can you repeat the question
13:26:46 20 again?

13:26:46 21 MR. DAVENPORT: Sure.

13:26:47 22 Can you read back the question that I just
13:26:49 23 asked?

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13:26:49 1 (The above-requested portion was then read
13:27:10 2 by the reporter.)

13:27:10 3 MS. HUGGINS: Same -- same form objection.

13:27:13 4 THE WITNESS: Yeah. Yes, as per that time
13:27:17 5 on the camera.

13:27:19 6 BY MR. DAVENPORT:

13:27:19 7 Q. Okay. So now assuming that you were
13:27:21 8 moving forward for six of those seconds, you
13:27:26 9 weren't stopped at the point that contact was made
13:27:28 10 between Mr. Kistner and the police vehicle,
13:27:30 11 correct?

13:27:30 12 MS. HUGGINS: Form.

13:27:32 13 THE WITNESS: No.

13:27:33 14 BY MR. DAVENPORT:

13:27:34 15 Q. Okay. Would you have been looking into
13:27:37 16 your driver's side mirror at this point?

13:27:41 17 A. Like I said earlier, I -- I could have
13:27:43 18 been looking at the mirror or forward, but I do
13:27:49 19 remember at some point looking at the driver's side
13:27:52 20 mirror and seeing what I thought I saw.

13:27:56 21 Q. So now assuming that you saw
13:27:59 22 Mr. Kistner make contact with the vehicle, you're
13:28:01 23 still driving forward for a few seconds, correct?

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13:28:04 1 MS. HUGGINS: Form.

13:28:04 2 THE WITNESS: Correct.

13:28:06 3 BY MR. DAVENPORT:

13:28:06 4 Q. So why didn't you stop after contact

13:28:08 5 was made between Mr. Kistner and the police

13:28:10 6 vehicle?

13:28:10 7 MS. HUGGINS: Form.

13:28:10 8 THE WITNESS: Well, because you have to come

13:28:12 9 to a safe stop. You can't just slam on the brakes

13:28:15 10 and slam your head into the steering wheel. You

13:28:18 11 know what I mean? You still have to stop.

13:28:21 12 BY MR. DAVENPORT:

13:28:21 13 Q. Okay. And it would have taken you,

13:28:24 14 let's assume, eight seconds to come back?

13:28:26 15 MS. HUGGINS: Form.

13:28:27 16 BY MR. DAVENPORT:

13:28:28 17 Q. To stop your car and come back, that

13:28:30 18 would be a safe stop?

13:28:31 19 MS. HUGGINS: Form.

13:28:32 20 THE WITNESS: Yeah.

13:28:32 21 BY MR. DAVENPORT:

13:28:32 22 Q. Okay. Now, let's assume that your

13:28:35 23 vehicle is moving away from the incident as it's

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13:28:37 1 happening. What -- do you think that what you
13:28:43 2 would be able to see would be distorted if you're
13:28:47 3 moving away from a scene rather than closer to
13:28:49 4 a scene?

13:28:50 5 MS. HUGGINS: Form.

13:28:50 6 THE WITNESS: You know, your eyes see what
13:28:54 7 they see, so I don't -- I can't speak on what can
13:28:58 8 be distorted and all that.

13:29:03 9 BY MR. DAVENPORT:

13:29:03 10 Q. But you saw Mr. Kistner make contact
13:29:06 11 with the vehicle?

13:29:07 12 MS. HUGGINS: Form. Asked and answered.

13:29:09 13 THE WITNESS: Yeah.

13:29:10 14 BY MR. DAVENPORT:

13:29:10 15 Q. And then you kept on driving forward?

13:29:12 16 MS. HUGGINS: Form.

13:29:12 17 THE WITNESS: I was slowing down to a stop
13:29:14 18 and then reversing, yeah.

13:29:15 19 BY MR. DAVENPORT:

13:29:15 20 Q. Was Karl Schultz telling you to stop at
13:29:18 21 that point?

13:29:18 22 A. Like I said, I don't -- I don't
13:29:21 23 remember if he told me to stop. I think I -- I

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13:29:24 1 think I just kind of stopped.

13:29:26 2 Q. Okay. Are you talking at all with Karl
13:29:31 3 Schultz as contact is initially made between the
13:29:33 4 police vehicle and Mr. Kistner?

13:29:34 5 MS. HUGGINS: Form.

13:29:35 6 THE WITNESS: As I already stated, I think --
13:29:40 7 I think we both -- I think either I said something,
13:29:44 8 he said something, or maybe we both said something
13:29:47 9 about what we thought we just saw.

13:29:50 10 BY MR. DAVENPORT:

13:29:50 11 Q. Okay. Now, I want you to watch again
13:30:02 12 the collision that is made between Mr. Kistner and
13:30:04 13 between the police vehicle, and I want you to tell
13:30:08 14 me if you still think that Mr. Kistner was the one
13:30:12 15 that threw himself at the police vehicle.

13:30:14 16 MS. HUGGINS: Form.

13:30:21 17 (Video clip played.)

13:30:21 18 BY MR. DAVENPORT:

13:30:21 19 Q. Does it look like Mr. Kistner threw
13:30:23 20 himself at that police vehicle?

13:30:24 21 MS. HUGGINS: Form.

13:30:24 22 THE WITNESS: Again, we're looking at
13:30:27 23 a camera at a different angle. What I saw from my

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13:30:31 1 perspective, it looked like he threw himself at the
13:30:36 2 vehicle.

13:30:37 3 BY MR. DAVENPORT:

13:30:37 4 Q. But, again --

13:30:38 5 A. So --

13:30:39 6 Q. -- your perspective was you looking in
13:30:41 7 your driver's side mirror, as you were driving
13:30:43 8 forward.

13:30:43 9 A. Correct.

13:30:43 10 Q. And you were driving forward for eight
13:30:45 11 seconds after initial contact was made.

13:30:49 12 A. That is correct.

13:30:50 13 MS. HUGGINS: Form.

13:30:50 14 BY MR. DAVENPORT:

13:30:50 15 Q. Okay. Now, after contact was made, did
13:30:52 16 you notice that police vehicle moving forward at
13:30:56 17 all?

13:30:56 18 I can replay it if you need me to.

13:30:59 19 A. I -- I just need you to say that
13:31:01 20 question again. What do you mean?

13:31:03 21 Q. Okay.

13:31:04 22 MS. HUGGINS: Can you read it back, Anne?

13:31:04 23 (The above-requested portion was then read

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13:31:24 1 by the reporter.)

13:31:24 2 THE WITNESS: By this video, at this angle,
13:31:28 3 that's what it looks like.

13:31:30 4 BY MR. DAVENPORT:

13:31:30 5 Q. Okay.

13:31:30 6 A. But from what I saw when -- again, when
13:31:33 7 I was looking in my mirror, that's not what I saw.

13:31:35 8 Q. Okay. Did anybody talk with -- did
13:31:41 9 either you or Karl Schultz talk with Lauren
13:31:44 10 McDermott and Jenny Velez to see what they saw?

13:31:45 11 A. I -- I would have never have done that.
13:31:48 12 Again, because I was so brand new, I deferred
13:31:51 13 everything to -- to the other officers.

13:31:54 14 MR. DAVENPORT: Okay. Now, I want you to
13:32:16 15 watch.

13:32:16 16 (Video clip played.)

13:32:16 17 BY MR. DAVENPORT:

13:32:18 18 Q. Who is that individual that just came
13:32:21 19 into the scene right here?

13:32:23 20 A. At the time, I -- I didn't know, and,
13:32:32 21 again, I -- I don't think we ever took down info.
13:32:38 22 I'm pretty sure it -- it was his son -- it's his
13:32:40 23 son.

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13:32:43 1 Q. Okay. Would it be normal for somebody
13:32:45 2 to run out after their father after they've been
13:32:48 3 hit by a police vehicle?

13:32:48 4 MS. HUGGINS: Form.

13:32:50 5 THE WITNESS: You can't -- you can't just
13:32:53 6 determine that from -- from not knowing who he is
13:32:55 7 or anything like that. You know what I mean?
13:32:57 8 I don't -- I don't -- I don't know who he is.

13:32:58 9 BY MR. DAVENPORT:

13:32:58 10 Q. But after you came to -- because you
13:33:00 11 did say that you came to learn that --

13:33:00 12 A. Yeah. Yeah.

13:33:02 13 Q. -- he may have been his son or --

13:33:03 14 A. So --

13:33:04 15 Q. -- related to him, that it would have
13:33:07 16 been normal for him to run out after his father
13:33:09 17 after he's been hit?

13:33:11 18 MS. HUGGINS: Form. Asked and answered, and
13:33:11 19 misstates the testimony.

13:33:12 20 THE WITNESS: It's normal for some people.
13:33:14 21 It's normal -- not normal for other people.
13:33:14 22 I mean --

13:33:15 23 BY MR. DAVENPORT:

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13:33:15 1 Q. Would you run out after your father, if
13:33:17 2 he was hit by a police vehicle?

13:33:18 3 A. Again, it's normal for some people.
13:33:20 4 It's normal -- not normal for --

13:33:22 5 Q. I'm asking you for what you would
13:33:25 6 specifically do.

13:33:25 7 A. I'm -- I'm going -- I'm going to answer.

13:33:25 8 MS. HUGGINS: Form.

13:33:27 9 THE WITNESS: Just let me answer.

13:33:27 10 BY MR. DAVENPORT:

13:33:28 11 Q. Okay.

13:33:28 12 A. It's normal for some people. It's not
13:33:30 13 normal for other people. I would. There's other
13:33:31 14 people that I've seen that don't really care. So
13:33:34 15 it is normal but it's also not normal.

13:33:36 16 Q. Okay. Now, at this point he runs out
13:33:40 17 and he stops really quickly. At this point would
13:33:44 18 you say that he's made any threatening motions or
13:33:46 19 anything that would make you concerned for your
13:33:48 20 safety?

13:33:49 21 MS. HUGGINS: Form.

13:33:50 22 THE WITNESS: No.

13:33:51 23 BY MR. DAVENPORT:

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13:33:51 1 Q. Okay. Now he runs out again -- well,
13:33:54 2 he's not even running at this point. He's just
13:33:57 3 kind of inching his way over to see what his
13:33:59 4 father's doing.

13:34:00 5 Is he at all concerned with what you or the
13:34:02 6 other officers are doing, or is he just trying to
13:34:05 7 see what his father's doing on the other side of
13:34:07 8 the police vehicle?

13:34:07 9 MS. HUGGINS: Form. Calls for speculation.

13:34:10 10 THE WITNESS: Yeah, I mean, I don't -- I
13:34:12 11 don't know what he's doing. He's not concerned
13:34:14 12 with the officers, though.

13:34:15 13 BY MR. DAVENPORT:

13:34:15 14 Q. Okay.

13:34:16 15 A. It doesn't -- it doesn't look like he
13:34:19 16 is.

13:34:19 17 Q. Now what's he doing there?
13:34:22 18 What do you think he's doing, based on the
13:34:24 19 video?

13:34:24 20 MS. HUGGINS: Form.

13:34:24 21 THE WITNESS: Bending over.

13:34:25 22 MS. HUGGINS: Compound question.

13:34:26 23 BY MR. DAVENPORT:

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13:34:26 1 Q. Based on the video, why would he be
13:34:28 2 bending over?

13:34:29 3 MS. HUGGINS: Form.

13:34:30 4 THE WITNESS: I -- I can't answer why he's
13:34:31 5 bending over. He could -- yeah. I mean, he could
13:34:34 6 be checking on his dad.

13:34:36 7 BY MR. DAVENPORT:

13:34:36 8 Q. Well, his father's on the ground,
13:34:38 9 right?

13:34:39 10 A. Yeah.

13:34:39 11 Q. Do you think maybe he's bending down to
13:34:41 12 get a better vantage point of his father?

13:34:44 13 A. Yeah.

13:34:44 14 MS. HUGGINS: Form.

13:34:44 15 THE WITNESS: I just said that he could be
13:34:46 16 checking on his dad.

13:34:48 17 BY MR. DAVENPORT:

13:34:48 18 Q. Okay. Now, at this point he walks
13:34:50 19 right past the officers, correct?

13:34:52 20 A. Yes.

13:34:52 21 Q. At this point has he made any
13:34:55 22 threatening motions or anything -- threatening
13:34:57 23 maneuvers that would cause the police officers

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13:34:59 1 concern?

13:35:04 2 A. No.

13:35:05 3 Q. Okay. Now, he walks back towards the
13:35:13 4 sidewalk, correct?

13:35:15 5 A. Yeah.

13:35:15 6 Q. Would you consider him to now be in the
13:35:17 7 scene of a police incident?

13:35:22 8 A. No.

13:35:22 9 Q. Okay. At any point before he left the
13:35:30 10 view of that camera, would you consider him to be
13:35:32 11 in the scene of a police -- police incident?

13:35:35 12 MS. HUGGINS: Form.

13:35:37 13 THE WITNESS: At the time and how brand new
13:35:41 14 I was, I would say no.

13:35:43 15 I would say, given my time on the job now,
13:35:46 16 he was in the scene at one point in time and now
13:35:49 17 he's no longer in the scene.

13:35:50 18 BY MR. DAVENPORT:

13:35:50 19 Q. Okay. Has he made any sort of
13:35:53 20 threatening motions or any sort of movements that
13:35:56 21 would cause you alarm?

13:35:57 22 A. No.

13:36:02 23 MR. DAVENPORT: Okay. Now, I want you to

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13:36:03 1 watch and see if this individual appears back in
13:36:05 2 the screen.

13:36:05 3 (Video clip played.)

13:36:32 4 THE WITNESS: So wherever that was -- what
13:36:34 5 was that? 42?

13:36:35 6 BY MR. DAVENPORT:

13:36:35 7 Q. Yes. We'll say 10:26:42, he's back in
13:36:38 8 the scene?

13:36:39 9 MS. HUGGINS: Form.

13:36:40 10 BY MR. DAVENPORT:

13:36:41 11 Q. Is he in the scene at this point?
13:36:43 12 Police scene.

13:36:43 13 A. On the -- on the -- wait. Say that
13:36:46 14 again.

13:36:47 15 Q. Is this individual in the police scene
13:36:49 16 at 10:40 -- 10:26:42?

13:36:52 17 A. He's in the -- the view of the camera.
13:36:53 18 I wouldn't say he's in the scene.

13:36:57 19 Q. Okay. At any point does he enter the
13:37:00 20 police scene?

13:37:08 21 At any point before I stopped?

13:37:10 22 A. No, but there's some type of contact
13:37:14 23 made. It looks like --

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13:37:14 1 Q. When --

13:37:16 2 A. It looks like there's some type of
13:37:18 3 contact made either between the officer and him or
13:37:21 4 him and the officer.

13:37:23 5 Q. Now, when you say contact, what are you
13:37:26 6 referring to?

13:37:28 7 A. Maybe he said something or the officer
13:37:32 8 said something to him. I don't know.

13:37:34 9 Q. Okay. So contact refers to something
13:37:35 10 that is verbally said.

13:37:37 11 MS. HUGGINS: Form.

13:37:38 12 THE WITNESS: Verbally, physically, yeah,
13:37:41 13 but in this scenario, verbal.

13:37:44 14 BY MR. DAVENPORT:

13:37:44 15 Q. Okay.

13:37:44 16 A. Some -- something -- something made the
13:37:45 17 officer direct his attention to the male.

13:37:50 18 Q. Okay.

13:37:51 19 A. Something.

13:37:51 20 Q. Now, I understand that it might be
13:37:53 21 different from what you saw that day, but now
13:37:55 22 watching the video, what does it appear that that
13:38:01 23 individual is doing?

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13:38:01 1 MS. HUGGINS: Form.

13:38:02 2 THE WITNESS: It appears as though he's on
13:38:04 3 his phone.

13:38:04 4 BY MR. DAVENPORT:

13:38:04 5 Q. Okay. Do you have any reason to know
13:38:07 6 today why he was on his phone at that time?

13:38:12 7 A. I -- I can't speculate why he's on his
13:38:17 8 phone. I don't know.

13:38:17 9 Q. Would that be something that's a
13:38:19 10 threatening motion made?

13:38:21 11 A. No.

13:38:21 12 Q. For a police officer, if somebody was
13:38:24 13 on their phone?

13:38:25 14 A. No.

13:38:32 15 Q. Okay. Now, when initial contact is
13:38:33 16 made between a police officer and this individual,
13:38:35 17 would you have to do some sort of a visual
13:38:37 18 assessment?

13:38:38 19 A. Can you explain that?

13:38:39 20 MS. HUGGINS: Form.

13:38:40 21 BY MR. DAVENPORT:

13:38:40 22 Q. Well, you -- you were saying that
13:38:41 23 contact has been made between the police officer

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13:38:43 1 and this individual.

13:38:46 2 What would be the next steps after that
13:38:47 3 contact is made in this situation?

13:38:50 4 MS. HUGGINS: Form. Are you asking what
13:38:52 5 happened or procedure?

13:38:53 6 MR. DAVENPORT: Procedure.

13:38:54 7 MS. HUGGINS: Form.

13:38:55 8 THE WITNESS: That can be dictated by other
13:39:00 9 variables. I don't know what is about to be said
13:39:04 10 or what the subject does or acts out.

13:39:10 11 BY MR. DAVENPORT:

13:39:10 12 Q. Okay. So let's say in this situation,
13:39:15 13 an individual is on their cell phone and contact
13:39:19 14 has been made between the police officer and this
13:39:22 15 individual.

13:39:22 16 What should the next steps be in this
13:39:25 17 situation, knowing that some individual has been
13:39:30 18 contacted by a police vehicle?

13:39:31 19 MS. HUGGINS: Form.

13:39:33 20 THE WITNESS: Well, I'm confused if you're
13:39:38 21 asking about two different things. About the --
13:39:42 22 the officers with the subject who --

13:39:47 23 BY MR. DAVENPORT:

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13:39:47 1 Q. Oh, no. I'm --

13:39:49 2 A. -- was contacted by the police vehicle
13:39:51 3 or -- or the subject that was contacted by this
13:39:53 4 officer. What are you -- what are you talking
13:39:55 5 about? Which one?

13:39:57 6 Q. So I'm not talking about the individual
13:39:58 7 that was contacted by the police vehicle. We were
13:40:01 8 talking about the contact that is made between the
13:40:03 9 individual who is on his phone and the individual --
13:40:06 10 the police officer who was out in the street.

13:40:09 11 What I want to know is --

13:40:10 12 A. Yeah. There's --

13:40:11 13 Q. -- in this situation, you know, what --
13:40:12 14 what should he be doing if an individual is on his
13:40:15 15 phone after somebody, possibly his father, has been
13:40:18 16 struck by a police vehicle?

13:40:19 17 MS. HUGGINS: Form.

13:40:19 18 THE WITNESS: There's -- there's no written
13:40:21 19 procedure. You can speak to him and leave. You
13:40:25 20 can speak to him and stay. You can -- I don't know
13:40:28 21 what they're talking about.

13:40:30 22 BY MR. DAVENPORT:

13:40:31 23 Q. Okay. Well, would there be any reason

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13:40:33 1 to take that cell phone from that individual?

13:40:35 2 MS. HUGGINS: Form.

13:40:37 3 THE WITNESS: It -- it -- no, not right now.

13:40:42 4 BY MR. DAVENPORT:

13:40:43 5 Q. Okay. Would there be any reason --

13:40:49 6 well, we'll keep on watching.

13:40:56 7 So now an individual -- this individual is,

13:41:00 8 would you agree, walking away from the police

13:41:03 9 officer that first made contact with him?

13:41:05 10 A. Mm-hmm. I'm sorry. Yes.

13:41:08 11 Q. And would you agree that he is still on

13:41:10 12 his cell phone at this point?

13:41:13 13 A. Yes.

13:41:13 14 Q. Okay. Now, what reasons would the

13:41:15 15 police officer have to go to that individual while

13:41:19 16 he's on his cell phone?

13:41:21 17 MS. HUGGINS: Form.

13:41:23 18 THE WITNESS: I can't --

13:41:23 19 MS. HUGGINS: Calls for speculation.

13:41:25 20 THE WITNESS: Yeah. I can't speculate

13:41:25 21 for -- and that's --

13:41:25 22 BY MR. DAVENPORT:

13:41:25 23 Q. Well, you were there.

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13:41:25 1 A. That's --

13:41:26 2 Q. You were there.

13:41:26 3 A. Well, let me -- let me talk.

13:41:28 4 MS. HUGGINS: Form.

13:41:29 5 THE WITNESS: I can't speculate for what
13:41:33 6 Karl's doing, but you can, in many scenarios, when
13:41:37 7 someone's walking away, detain them for whatever
13:41:41 8 reason. Whatever reason is -- is legal in that
13:41:44 9 moment.

13:41:46 10 And for you to say that I was there, I wasn't.
13:41:48 11 I was over at a totally different vehicle.

13:41:50 12 BY MR. DAVENPORT:

13:41:50 13 Q. Okay.

13:41:50 14 A. So I don't know what they were talking
13:41:52 15 about. That's speculation.

13:41:53 16 Q. Okay. So now this individual is
13:41:55 17 walking away from Karl Schultz, and Karl Schultz is
13:41:58 18 walking towards him. I mean, this guy's still on
13:42:02 19 his cell phone, correct?

13:42:03 20 What -- what possible things could he have
13:42:04 21 said where Karl Schultz would still be following
13:42:06 22 after him?

13:42:07 23 MS. HUGGINS: Form. There's a lot of

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13:42:09 1 foundational problems with that question. It's
13:42:11 2 compound. It's --

13:42:11 3 MR. DAVENPORT: It's a deposition. He can
13:42:13 4 answer the question.

13:42:14 5 You can -- you can move to strike it if you
13:42:16 6 would like, but he can answer the question.

13:42:18 7 MS. HUGGINS: You have to ask -- ask proper
13:42:19 8 questions.

13:42:19 9 MR. DAVENPORT: It's a proper question.

13:42:21 10 I'm asking -- he's on his cell phone. He's
13:42:23 11 walking away from Karl Schultz. What possible
13:42:26 12 things could he have said that would need Karl
13:42:29 13 Schultz to keep on walking after him?

13:42:31 14 MS. HUGGINS: Form. It calls for
13:42:32 15 speculation, and it's a compound question.

13:42:33 16 MR. DAVENPORT: I'm just asking what things
13:42:35 17 could have possibly been said. He can answer the
13:42:37 18 question.

13:42:38 19 THE WITNESS: I would still defer to Karl
13:42:40 20 Schultz. I -- I don't know --

13:42:40 21 BY MR. DAVENPORT:

13:42:40 22 Q. Would there be any reason --

13:42:43 23 A. -- what was said.

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13:42:44 1 Q. -- why you would go?

13:42:45 2 MS. HUGGINS: Allow him to finish an answer.

13:42:48 3 THE WITNESS: I don't know what was said.

13:42:53 4 In many different scenarios I've just let

13:42:57 5 people walk away. In other scenarios I've kept

13:43:00 6 them on scene.

13:43:01 7 I don't know. I don't know -- I don't know

13:43:01 8 what was said during the interaction between Karl

13:43:05 9 and the subject, so I don't know.

13:43:08 10 BY MR. DAVENPORT:

13:43:08 11 Q. Now, situations where you have kept the

13:43:10 12 person on scene, what types of things did that

13:43:13 13 individual say?

13:43:14 14 MS. HUGGINS: Form.

13:43:16 15 THE WITNESS: They could say something

13:43:19 16 specific to the scene, and -- I don't know -- maybe

13:43:25 17 they -- they witnessed something and you need

13:43:28 18 a statement from them.

13:43:28 19 Maybe -- maybe they said something that

13:43:34 20 would elicit a disorderly conduct penal law charge

13:43:40 21 and get arrested.

13:43:41 22 You could -- you know, there's -- there's

13:43:43 23 many different things that someone would say where

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13:43:45 1 you would keep someone on scene and detain them and
13:43:49 2 take it from there.

13:43:51 3 BY MR. DAVENPORT:

13:43:51 4 Q. Now, assuming that this person said
13:43:54 5 something about the scene that would have made them
13:43:57 6 a witness, did anybody take a statement from him
13:44:02 7 that day?

13:44:03 8 MS. HUGGINS: Form.

13:44:04 9 THE WITNESS: I never said that he was
13:44:05 10 a witness. I don't know if any statement was
13:44:09 11 taken. I would have deferred to the senior
13:44:11 12 officers.

13:44:11 13 BY MR. DAVENPORT:

13:44:11 14 Q. Okay. Now, would you agree that the
13:44:22 15 individual is now out of the scene and so is
13:44:25 16 Officer Karl Schultz at this point?

13:44:28 17 A. Yes.

13:44:28 18 Q. Okay. Where are you at this point?

13:44:29 19 A. I'm in the lower right-hand corner of
13:44:32 20 the video screen.

13:44:33 21 Q. And what direction are you facing?

13:44:36 22 A. East.

13:44:38 23 Q. And east would be in the -- you were

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13:44:40 1 facing the direction where that individual was,
13:44:44 2 correct?

13:44:45 3 A. The subject with Karl, yes.

13:44:48 4 Q. Okay. Do you know how -- approximately
13:44:53 5 how far away from the subject you were?

13:44:55 6 A. I -- I -- no, I don't.

13:44:57 7 Q. Okay. Now, at this point is Karl
13:45:05 8 Schultz leading the individual out -- back out into
13:45:07 9 the street?

13:45:09 10 A. Yes.

13:45:09 11 Q. Does it look like he's going out there
13:45:11 12 voluntarily, the individual?

13:45:13 13 A. No. It looks from -- from this camera,
13:45:16 14 he was being detained for some reason.

13:45:19 15 Q. Okay. Where were you at this time?

13:45:23 16 A. On the left side of Karl.

13:45:25 17 Q. Okay. Were you facing the individual?

13:45:28 18 A. Yeah. And -- yeah. Karl and the
13:45:30 19 individual, yeah.

13:45:31 20 Q. Okay. Now, where is the individual at
13:45:41 21 this time?

13:45:41 22 A. Lower right.

13:45:42 23 Q. Okay. Is any officer touching the

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13:45:47 1 individual?

13:45:48 2 A. Yes.

13:45:49 3 Q. And who is that individual?

13:45:50 4 A. Karl Schultz.

13:45:51 5 Q. And where are you at this time?

13:45:53 6 A. On the same side. The left side of

13:45:57 7 Karl Schultz.

13:45:57 8 Q. Okay. And are you facing the

13:45:59 9 individual?

13:46:00 10 A. Yes.

13:46:01 11 Q. Okay. Has any pat-down been done of

13:46:03 12 the individual at this point?

13:46:04 13 A. Not yet.

13:46:05 14 Q. Okay. Has any pat-down been done of

13:46:14 15 the individual at this point?

13:46:14 16 A. You can't really see, but I don't -- I

13:46:17 17 don't believe so.

13:46:18 18 Q. Well, you told me that the pat-down

13:46:21 19 would consist of patting down the pant legs,

13:46:23 20 correct?

13:46:23 21 A. Yeah.

13:46:23 22 Q. Has any -- does it look like Karl

13:46:25 23 Schultz has reached down at all, or does he still

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13:46:28 1 have his hands up, near the individual's head?

13:46:30 2 MS. HUGGINS: Form.

13:46:30 3 THE WITNESS: This camera view, it looks
13:46:32 4 like they're still up, upper body.

13:46:34 5 BY MR. DAVENPORT:

13:46:34 6 Q. Okay. Now, what just happened there?

13:46:40 7 A. A little bit of resistance.

13:46:45 8 Q. So when you say there was a little bit
13:46:47 9 of resistance, by who? The individual or the
13:46:49 10 police officer?

13:46:50 11 A. It looks like the subject, but that
13:46:54 12 doesn't always mean anything. It's an emotional
13:46:59 13 state. People sometimes act on emotion and kind of
13:47:06 14 pull away and push off a cop and then -- and then
13:47:10 15 they calm down.

13:47:13 16 Q. Now, where -- where are you at this
13:47:15 17 time? Can you be seen in the camera?

13:47:18 18 A. Can you start it over two seconds
13:47:20 19 before this so I can see exactly where I am?

13:47:23 20 Q. Sure. It might skip, so I might have
13:47:28 21 to go back again.

13:47:33 22 A. It looks like I'm on the right side.

13:47:36 23 Q. I'm sorry. I'm sorry. One second.

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13:47:40 1 A. Oh, sorry.

13:47:40 2 Q. Okay. All right. So we have it the
13:47:42 3 two seconds before my previous question, so now my
13:47:44 4 question is: From the time stamp 10:27:16, until
13:47:50 5 the time stamp 10:27:18, where we were previously
13:47:54 6 stopped, just kind of watch yourself, and tell me
13:47:57 7 where you're positioned at 10:27:18.

13:48:00 8 A. Okay.

13:48:01 9 Q. Or where -- you know, where you would
13:48:03 10 think that you are.

13:48:04 11 MS. HUGGINS: Form.

13:48:07 12 THE WITNESS: So I'm on the western side of
13:48:11 13 the subject that Karl made contact with, or he made
13:48:15 14 contact with Karl.

13:48:16 15 BY MR. DAVENPORT:

13:48:16 16 Q. Okay. So, now, when an individual
13:48:19 17 tries to struggle to get away from an officer or
13:48:22 18 there's some sort of resistance, did you receive
13:48:25 19 any training at that point on how to handle that
13:48:28 20 situation?

13:48:29 21 A. Yeah. There's like some -- they call
13:48:35 22 it verbal judo. You just kind of talk and
13:48:38 23 deescalate situations.

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13:48:40 1 Q. But verbal, not physical?

13:48:42 2 A. You can -- you can be physical to help
13:48:45 3 calm someone down, yeah, absolutely.

13:48:46 4 Q. Was that part of your training?

13:48:51 5 A. I don't remember if it was part of
13:48:53 6 academy or anything.

13:48:54 7 Q. Okay. At this point have you -- had
13:48:59 8 you encountered any individuals who had tried to
13:49:01 9 resist a police officer?

13:49:02 10 A. Yeah. Yeah. This morning, on the
13:49:04 11 Sattler call.

13:49:05 12 Q. Okay. And what sort of resistance did
13:49:09 13 you encounter in that situation?

13:49:12 14 A. Totally different scenario. Someone
13:49:15 15 that was running from police.

13:49:17 16 Q. And what -- what did you do in that
13:49:19 17 situation?

13:49:19 18 A. I ran after him.

13:49:21 19 Q. Okay. Did you actually catch the
13:49:24 20 individual --

13:49:24 21 A. I didn't.

13:49:25 22 Q. -- that was trying to run away?

13:49:26 23 A. I didn't.

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13:49:26 1 MS. HUGGINS: Form. Asked and answered.

13:49:28 2 THE WITNESS: I did not apprehend him, no.

13:49:30 3 BY MR. DAVENPORT:

13:49:30 4 Q. Were you involved at all in trying to
13:49:33 5 keep the individual from resisting?

13:49:37 6 A. The one from the Sattler call?

13:49:38 7 Q. Sattler.

13:49:39 8 A. No.

13:49:40 9 Q. Okay. So was that the only other time
13:49:42 10 that you had encountered somebody resisting being
13:49:46 11 detained by a police officer?

13:49:47 12 A. At that -- at that time I don't
13:49:49 13 remember any other incidents before -- before this
13:49:56 14 where someone had resisted. Very -- still very
13:50:01 15 new.

13:50:01 16 Q. Okay. Now, at this point we're at
13:50:08 17 10:27:21. It's three seconds after you had been on
13:50:11 18 the right side of the individual. Has there been
13:50:14 19 any pat-down that's been done of the subject?

13:50:18 20 A. It didn't -- didn't look -- look like
13:50:20 21 it so far, no.

13:50:21 22 Q. Okay.

13:50:34 23 A. So he's emptying out his own pockets

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13:50:37 1 right now.

13:50:37 2 Q. Okay. Why would he be emptying his
13:50:39 3 pockets?

13:50:41 4 A. Discretion. Maybe -- you know, I've
13:50:44 5 had people just empty out their pockets and pull up
13:50:47 6 their shirt to make sure they don't have anything
13:50:50 7 in their waistband.

13:50:51 8 I don't have to touch anybody if I don't
13:50:53 9 want to on a pat-down. They can pat themselves
13:50:55 10 down, and I can see inside their pockets -- well,
13:50:58 11 not see inside their pockets, but they can print
13:51:01 12 their pockets, fine.

13:51:03 13 Q. Okay.

13:51:03 14 A. You know, I don't need to -- I don't
13:51:04 15 need to do it myself.

13:51:06 16 And he was willing to and then spoke to us.

13:51:08 17 Q. If he was shaking his pockets, would
13:51:10 18 that count as a pat-down?

13:51:14 19 Would that be a proper pat-down?

13:51:16 20 MS. HUGGINS: Form.

13:51:18 21 THE WITNESS: I mean, if -- I guess if the
13:51:20 22 officer was satisfied with it.

13:51:23 23 BY MR. DAVENPORT:

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13:51:23 1 Q. So it would be officer discretion then?

13:51:25 2 A. Yeah.

13:51:28 3 Q. Now, at this point does it appear that
13:51:33 4 he's patting his pants or is he checking his coat?

13:51:38 5 A. It looks like he could have been doing
13:51:40 6 something with his coat. Maybe emptying out coat
13:51:42 7 pockets or something. I don't --

13:51:43 8 Q. Okay.

13:51:44 9 A. I don't know. Or I'm sorry. I don't
13:51:46 10 remember.

13:51:46 11 Q. It looks like he pulled something out
13:51:50 12 of his coat pocket. Do you know what that would
13:51:52 13 be?

13:51:52 14 A. I -- no. I don't remember.

13:51:53 15 Q. Okay. In this situation, what would
13:51:55 16 you expect him to pull out of his pockets?

13:51:57 17 MS. HUGGINS: Form.

13:51:58 18 THE WITNESS: I don't remember if anyone
13:52:01 19 asked him to go in his pockets or to get anything
13:52:06 20 out of his pockets.

13:52:07 21 BY MR. DAVENPORT:

13:52:07 22 Q. Okay.

13:52:10 23 A. Just because of the fact that I was so

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13:52:13 1 brand new, I don't know.

13:52:14 2 Q. Sure.

13:52:15 3 Would it be proper to ask this person for
13:52:18 4 an identification in this situation?

13:52:20 5 A. I mean, it -- it -- it falls back on
13:52:22 6 officer discretion. I think that if someone
13:52:27 7 said -- let's say in this example he did, and, of
13:52:30 8 course, I don't want to speculate -- if he was
13:52:31 9 like, that's my dad, then I can just ask someone
13:52:35 10 their name, and I could be okay with that, and then
13:52:39 11 other cops would still want to see an ID.

13:52:42 12 Q. Okay.

13:52:46 13 A. Or maybe what -- whatever he pulled out
13:52:48 14 of his pockets was an ID. I don't -- I don't know.

13:52:50 15 Q. Okay. Did he pat down his pants at all
13:52:52 16 during that exchange?

13:52:54 17 A. Yeah. There was a few seconds prior to
13:52:57 18 this that you showed where he was doing stuff with
13:53:00 19 his pants.

13:53:01 20 MR. DAVENPORT: Okay. We'll watch it again.

13:53:01 21 (Video clip played.)

13:53:01 22 BY MR. DAVENPORT:

13:53:19 23 Q. Did you notice him pat his pants at any

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13:53:21 1 point?

13:53:22 2 A. Yeah. You've just got to rewind it
13:53:25 3 further, because he did it on camera.

13:53:27 4 Q. Okay. So it would have been before the
13:53:28 5 point that I went back to?

13:53:31 6 THE WITNESS: Yeah.

13:53:31 7 (Video clip played.)

13:53:37 8 BY MR. DAVENPORT:

13:53:37 9 Q. Now, I just want you to focus on any
13:53:39 10 time that he patted his pants, and then I would ask
13:53:41 11 you to please tell me to stop.

13:53:42 12 MS. HUGGINS: Form.

13:53:43 13 THE WITNESS: So right there.

13:53:44 14 BY MR. DAVENPORT:

13:53:44 15 Q. He's patting his pants at that point?

13:53:45 16 A. Well, he's already on to his coat, but
13:53:49 17 it looked like he was patting his pants down real
13:53:51 18 quick.

13:53:54 19 Q. Did he pat his pants at any point
13:53:56 20 during that?

13:53:57 21 A. No. No. That was his coat.

13:54:16 22 Q. Okay. Now, during a pat-down, would
13:54:19 23 you expect somebody to reach down towards their

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13:54:21 1 ankles to show that they don't have a weapon in
13:54:23 2 their sock or shoe?

13:54:24 3 MS. HUGGINS: Form.

13:54:26 4 THE WITNESS: That's discretion.

13:54:27 5 BY MR. DAVENPORT:

13:54:28 6 Q. What would be proper for a pat-down?

13:54:29 7 MS. HUGGINS: Form.

13:54:29 8 THE WITNESS: Again, that's -- that's
13:54:32 9 discretion. I've -- I've given full pat-downs
13:54:35 10 before and -- and I went from their sleeves, all
13:54:39 11 the way down to their ankles, and then other times
13:54:42 12 I've had someone lift up their shirt to make sure
13:54:46 13 they didn't have a gun in their waistband and left
13:54:49 14 it as that.

13:54:49 15 BY MR. DAVENPORT:

13:54:49 16 Q. Okay.

13:54:50 17 A. So it all falls on discretion.

13:54:52 18 Q. Okay. How many times have you allowed
13:54:53 19 the individual to pat themselves down, as opposed
13:54:56 20 to you doing that pat-down?

13:54:57 21 MS. HUGGINS: Form.

13:54:57 22 THE WITNESS: I don't know specifics.

13:54:59 23 MR. DAVENPORT: I would ask also what's the

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13:55:01 1 form objection there?

13:55:02 2 MS. HUGGINS: How many times have you asked
13:55:03 3 a person to pat down themselves before you doing
13:55:06 4 it?

13:55:08 5 MR. DAVENPORT: I don't think that was the
13:55:09 6 question.

13:55:09 7 MS. HUGGINS: We can read back the question.

13:55:11 8 MR. DAVENPORT: Yes, please.

13:55:11 9 (The above-requested portion was then read
13:55:32 10 by the reporter.)

13:55:32 11 MS. HUGGINS: It's the use of the term
13:55:33 12 pat-down.

13:55:34 13 MR. DAVENPORT: Okay. You can answer.

13:55:34 14 THE WITNESS: Yeah, I wouldn't have
13:55:38 15 a specific number on that.

13:55:39 16 BY MR. DAVENPORT:

13:55:40 17 Q. But you have done that before?

13:55:43 18 A. Yeah.

13:55:44 19 Q. Okay. Now, at this point it appears
13:56:00 20 that you are no longer in the camera view and
13:56:02 21 Officer Schultz is no longer in the camera view,
13:56:05 22 but the individual's still standing in the street.
13:56:08 23 What would have been done -- what was being

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13:56:11 1 done at this point?

13:56:15 2 A. I don't remember. I would -- I would
13:56:17 3 defer to Karl on that.

13:56:18 4 Q. Okay. Why would you go back to the
13:56:21 5 police vehicle at that point?

13:56:23 6 A. I was probably following Karl around
13:56:25 7 and shadowing him.

13:56:34 8 Q. Okay.

13:56:42 9 A. So in the lower -- lower right.

13:56:53 10 Q. Now, at this point it appears that Karl
13:56:56 11 is radioing in. Would you agree to that?

13:56:58 12 A. Yes.

13:56:59 13 Q. Do you know what he was radioing in?

13:57:01 14 A. I don't. I don't remember.

13:57:02 15 Q. What would he possibly be radioing in
13:57:04 16 at that point?

13:57:05 17 MS. HUGGINS: Form.

13:57:09 18 THE WITNESS: I don't -- I actually don't
13:57:12 19 recall. I don't know -- I don't know. I mean,
13:57:16 20 I -- I did hear the -- the radio things over the
13:57:19 21 radio, but I didn't -- I don't know what he was
13:57:22 22 calling in right now.

13:57:30 23 BY MR. DAVENPORT:

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13:57:30 1 Q. Okay. Did you have access to a radio
13:57:35 2 at this point?

13:57:35 3 A. I did have access to a radio, yeah.

13:57:37 4 Q. Okay.

13:57:38 5 A. I didn't -- I didn't use it.

13:57:39 6 Q. What situations would you have used
13:57:43 7 that radio?

13:57:43 8 MS. HUGGINS: Form.

13:57:44 9 THE WITNESS: At -- at this point in time,
13:57:47 10 I probably -- and, again, I -- I don't remember in
13:57:55 11 total. I probably wasn't on the radio at all
13:57:57 12 because I was so brand new.

13:57:59 13 This -- this would have been Karl on the
13:58:01 14 radio, and I think I just started driving.

13:58:08 15 BY MR. DAVENPORT:

13:58:08 16 Q. Okay. Now, it appears at this point
13:58:39 17 that you're just walking around. Would there have
13:58:44 18 been anything that you would have had to do in this
13:58:48 19 situation?

13:58:48 20 Was -- were you receiving any directions
13:58:49 21 from any of the other officers?

13:58:51 22 A. I don't -- I don't think so.

13:58:53 23 Q. Okay. Why would that individual still

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13:59:01 1 be in the street at this point?

13:59:06 2 MS. HUGGINS: Form.

13:59:06 3 THE WITNESS: Honestly, I don't -- I don't

13:59:09 4 know. I'm sorry. I don't remember.

13:59:12 5 MR. DAVENPORT: Okay.

13:59:19 6 THE VIDEOGRAPHER: Mr. Davenport, for the

13:59:20 7 purposes of the media, could we take a quick

13:59:22 8 off-the-record break and --

13:59:22 9 MR. DAVENPORT: Yes, we can.

13:59:23 10 THE VIDEOGRAPHER: -- then start back up?

13:59:24 11 MR. DAVENPORT: Yes, we can.

13:59:28 12 THE VIDEOGRAPHER: Okay.

13:59:28 13 (A recess was then taken at 1:59 p.m.)

13:59:28 14 (On the record at 2:01 p.m.)

14:02:18 15 (Video clip played.)

14:02:18 16 BY MR. DAVENPORT:

14:02:19 17 Q. Now, at this point it's 10:25:48. The

14:02:21 18 police vehicle has just stopped, and it appears

14:02:24 19 that the person on the passenger side door has

14:02:27 20 opened the door. Would you agree with that?

14:02:29 21 A. Yeah. It -- it looks that way through

14:02:31 22 the trees.

14:02:32 23 Q. Okay. So now you -- it appears that

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14:02:37 1 you and Officer Schultz have exited the vehicle?

14:02:41 2 A. Yes.

14:02:43 3 Q. It --

14:02:44 4 A. I'm sorry.

14:02:44 5 Q. No. I'm sorry.

14:02:45 6 And the time is 10:25:51. I'm not asking

14:02:48 7 you to verify the accuracy of it, just whether you

14:02:52 8 see 10:25:51 on the screen.

14:02:54 9 A. Oh, yeah.

14:02:57 10 Q. Okay. Thank you.

14:03:10 11 Do you know what that car -- the beige car

14:03:37 12 or gray car that was there?

14:03:38 13 A. No.

14:03:39 14 Q. Okay. Now, the subject that we were

14:04:03 15 referring to before who was on his cell phone, does

14:04:07 16 he appear in the screen at 10:26:42?

14:04:11 17 A. Yes.

14:04:11 18 Q. Okay. Once again, not asking you to

14:04:13 19 verify the accuracy, just what time you see on the

14:04:16 20 screen.

14:04:23 21 So now at this point, do you see the subject

14:04:30 22 who was struck by the car walking back towards your

14:04:33 23 police vehicle?

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14:04:36 1 A. The subject, yeah, that threw himself
14:04:39 2 on the car and the officer's walking him back,
14:04:42 3 yeah.

14:04:44 4 Q. Now, when you say, threw himself at the
14:04:46 5 car, is that based on what you remember or based on
14:04:49 6 what you saw on the video?

14:04:50 7 A. No. That's based off what I remember
14:04:52 8 seeing.

14:04:53 9 Q. Okay. What about based off of what you
14:04:56 10 see in the video, what do you think?

14:04:57 11 MS. HUGGINS: Form.

14:04:58 12 THE WITNESS: Based on what I see in the
14:04:59 13 video, it's a different perspective than what I saw
14:05:02 14 in real life.

14:05:03 15 BY MR. DAVENPORT:

14:05:03 16 Q. Okay. Now, at 10:27:00, we see an
14:05:21 17 officer that's walking towards the sidewalk; is
14:05:23 18 that correct?

14:05:23 19 A. Yeah. Yes.

14:05:24 20 Q. Do you know who that officer was?

14:05:28 21 A. Karl Schultz.

14:05:29 22 Q. Okay. Now, at 10:27:04, we see the
14:05:39 23 individual. Is he facing Karl Schultz?

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14:05:43 1 A. In a bladed stance, yeah.

14:05:46 2 Q. What do you mean by a bladed stance?

14:05:48 3 A. It looks like his feet are facing

14:05:50 4 north, but his upper body is facing Karl, which is

14:05:53 5 west.

14:05:55 6 Q. Okay. I just want to rewind.

14:05:57 7 A. It looks like that.

14:05:59 8 Q. Okay. Okay. Now, immediately before

14:06:16 9 this 10:27 time stamp, did you see Karl Schultz

14:06:19 10 make any sort of gestures?

14:06:21 11 And I'll replay it.

14:06:23 12 A. Yeah. Can you go -- can you go back,

14:06:24 13 please?

14:06:24 14 Q. Yeah.

14:06:28 15 THE WITNESS: Thank you.

14:06:28 16 (Video clip played.)

14:06:41 17 THE WITNESS: He did something with his left

14:06:42 18 hand.

14:06:43 19 BY MR. DAVENPORT:

14:06:43 20 Q. Could you tell what that was?

14:06:46 21 A. Not -- not with this camera, no.

14:06:48 22 Q. Did it look like he was motioning for

14:06:50 23 someone to come towards him?

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14:06:54 1 A. Either that or he was gesturing
14:06:56 2 towards -- towards someone.

14:06:57 3 Q. Okay. Did he make that same gesture
14:07:01 4 again?

14:07:02 5 A. Yeah. Yes. I'm sorry.

14:07:10 6 Q. Okay. Now, at this point, where is the
14:07:14 7 subject's right hand?

14:07:16 8 MS. HUGGINS: Form.

14:07:16 9 THE WITNESS: Up by his face.

14:07:18 10 BY MR. DAVENPORT:

14:07:18 11 Q. Okay. Does it appear that it's on the
14:07:22 12 side of his face? In front of his face?

14:07:24 13 A. The side of his face.

14:07:26 14 Q. Okay. Why do you think his hand would
14:07:28 15 be on the side of his face?

14:07:29 16 MS. HUGGINS: Form.

14:07:31 17 THE WITNESS: As we discussed earlier, it
14:07:32 18 appeared as though he was on his phone.

14:07:34 19 BY MR. DAVENPORT:

14:07:34 20 Q. Okay. So now the individual's still on
14:07:38 21 his phone, correct?

14:07:40 22 A. Yes.

14:07:40 23 Q. And did the officer make contact --

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14:07:44 1 physical contact with the subject?

14:07:46 2 A. It -- you can't tell, but it looks as
14:07:51 3 though, with Karl's right arm, he might have made
14:07:55 4 contact with the left side of the subject's body.

14:07:57 5 Q. Okay. I'll just play it in one
14:08:00 6 continuous motion so that way hopefully you can see
14:08:03 7 that a little bit better.

14:08:04 8 MS. HUGGINS: Do you want to even go back
14:08:06 9 like one more second?

14:08:09 10 MR. DAVENPORT: Yeah.

14:08:10 11 MS. HUGGINS: I don't want it to skip.

14:08:10 12 (Video clip played.)

14:08:24 13 BY MR. DAVENPORT:

14:08:24 14 Q. So now did you see the subject also
14:08:26 15 raise his left arm?

14:08:27 16 A. I did.

14:08:28 17 Q. What did it look like he was doing?

14:08:31 18 A. I -- I -- I don't know what they
14:08:33 19 were -- I'm sorry -- I don't remember what they
14:08:35 20 were talking about, so I don't -- I don't know what
14:08:39 21 he was doing.

14:08:39 22 Q. Someone --

14:08:40 23 A. I just came around from the other side

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14:08:42 1 of the vehicle, as we just watched, so I don't know
14:08:44 2 what is taking place between the officer and the
14:08:49 3 subject.

14:08:49 4 Q. So, now, when somebody raises their
14:08:51 5 left hand, as the subject did, and then they start
14:08:55 6 walking away from the officer, what would that say
14:08:57 7 to you?

14:08:57 8 MS. HUGGINS: Form.

14:08:58 9 THE WITNESS: I -- it could mean a whole
14:09:00 10 bunch of things, and I don't know because, you
14:09:04 11 know -- and I can't even tell what I'm looking at,
14:09:07 12 you know, behind -- behind the tree.

14:09:08 13 Maybe I'm talking to, you know, Lauren.
14:09:10 14 Maybe I'm saying something to Lauren. Because I'm
14:09:13 15 still bladed south, so I -- I don't know exactly
14:09:16 16 what they were talking about, and I -- and I --
14:09:18 17 maybe I didn't even see him, you know, raise his
14:09:22 18 left hand, and maybe I didn't see Karl make the
14:09:24 19 motions with -- with his hands. I don't know
14:09:26 20 what's going on there.

14:09:27 21 BY MR. DAVENPORT:

14:09:27 22 Q. Sure. No. And I'm -- I'm sorry,
14:09:29 23 Officer Moriarity. I'm not talking about what you

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14:09:32 1 saw.

14:09:32 2 A. Okay.

14:09:32 3 Q. I'm just merely talking about what you
14:09:34 4 are seeing currently in the video. I understand
14:09:36 5 that on the day of the incident, you may have not
14:09:38 6 have seen every event that unfolded. I'm just
14:09:41 7 merely asking your opinion on what you just saw
14:09:43 8 between the subject and Officer Schultz.

14:09:44 9 MS. HUGGINS: Form.

14:09:44 10 THE WITNESS: Yeah, I mean, I -- I don't --
14:09:46 11 I don't know what that hand motion could have been.

14:09:49 12 BY MR. DAVENPORT:

14:09:49 13 Q. Okay. But he did raise out his left
14:09:52 14 arm and then walk away from Officer Schultz,
14:09:55 15 correct?

14:09:55 16 A. Yes, he definitely did do that.

14:09:57 17 Q. Okay. So, now, did you see that
14:10:01 18 contact was made between Officer Schultz and the
14:10:04 19 individual?

14:10:04 20 A. Yes, I did.

14:10:05 21 Q. Physical contact.

14:10:08 22 I'm sorry, Officer Moriarity.

14:10:08 23 A. Yes.

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14:10:09 1 Q. Physical contact?

14:10:10 2 A. Yeah. Yeah.

14:10:13 3 Q. Okay. Now, at this point,
14:10:14 4 Officer Schultz is bringing the individual
14:10:16 5 out, back towards the street, correct?

14:10:19 6 A. Yes.

14:10:19 7 Q. And where are you at that point?

14:10:21 8 A. Right in front of him.

14:10:22 9 Q. Right in front of him? Okay.

14:10:24 10 Are you facing the -- the subject?

14:10:25 11 A. I am.

14:10:26 12 Q. Okay. Now, at this point does it
14:10:32 13 appear that the individual still had his right arm
14:10:36 14 up near his face?

14:10:37 15 And I'll rewind it a little bit just so we
14:10:40 16 can see it again.

14:10:41 17 A. Correct, he does.

14:10:41 18 Q. Okay.

14:10:46 19 A. Excuse me.

14:10:56 20 Q. So now I just want you to pay attention
14:10:59 21 and see, did that individual ever take his right
14:11:01 22 arm away from the side of his face?

14:11:03 23 A. No.

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14:11:03 1 Q. Okay. And what would that lead you to
14:11:06 2 believe?

14:11:06 3 MS. HUGGINS: Form.

14:11:06 4 THE WITNESS: He -- he could still be on his
14:11:08 5 phone.

14:11:15 6 BY MR. DAVENPORT:

14:11:15 7 Q. Okay. Now, did you see Officer Schultz
14:11:17 8 grab something from the individual?

14:11:20 9 And I can replay it.

14:11:22 10 A. Yeah, could you, please? Thank you.

14:11:26 11 MR. DAVENPORT: Sure.

14:11:26 12 (Video clip played.)

14:11:26 13 BY MR. DAVENPORT:

14:11:44 14 Q. Did it appear that he grabbed something
14:11:46 15 out of the individual's right hand?

14:11:48 16 A. It looked that way.

14:11:50 17 Q. Okay. What do you think he grabbed?

14:11:52 18 A. He could have grabbed his phone.

14:11:54 19 MS. HUGGINS: Form.

14:11:55 20 BY MR. DAVENPORT:

14:11:56 21 Q. Where are you facing at that time?

14:11:57 22 A. It looks like I'm facing them.

14:11:59 23 Q. So you would assume that you probably

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14:12:00 1 saw that?

14:12:01 2 MS. HUGGINS: Form.

14:12:01 3 THE WITNESS: Yeah. I mean, I -- I -- yeah.

14:12:09 4 BY MR. DAVENPORT:

14:12:09 5 Q. Okay. So what did you just see right
14:12:11 6 there?

14:12:11 7 A. I don't know what I just -- I don't --
14:12:13 8 it looked like he pulled away and resisted whatever
14:12:19 9 Karl was doing.

14:12:22 10 Q. Did it look like it needed two officers
14:12:25 11 to keep that subject under control?

14:12:28 12 A. I would -- I would think so, yeah.

14:12:29 13 Q. Is that something that's typically done
14:12:32 14 is two officers --

14:12:33 15 A. Yes.

14:12:33 16 Q. -- to keep someone under control?

14:12:37 17 MS. HUGGINS: Form.

14:12:44 18 BY MR. DAVENPORT:

14:12:44 19 Q. Now, we talked about verbal cues before
14:12:46 20 as something that was part of your training. When
14:12:48 21 would it be appropriate to use verbal cues as
14:12:51 22 opposed to physical cues to subdue somebody who is
14:12:54 23 trying to resist detainment?

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14:12:56 1 A. It all depends on --

14:12:56 2 MS. HUGGINS: Form.

14:12:58 3 THE WITNESS: -- the actions of the person.

14:13:00 4 BY MR. DAVENPORT:

14:13:00 5 Q. What actions that you see in this video

14:13:02 6 would lead you to believe that physical methods

14:13:06 7 rather than verbal methods should have been used

14:13:08 8 for that individual?

14:13:09 9 A. Right now it's verbal, and then if you
14:13:13 10 press play, right now.

14:13:16 11 Q. And what -- what leads you to believe
14:13:18 12 that physical --

14:13:20 13 A. He did a pushing off or a jerking
14:13:23 14 motion from Karl when Karl was trying to talk to
14:13:26 15 him and continue whatever contact he was originally
14:13:31 16 trying to make with him in -- in -- in detainment.
14:13:36 17 In a form of detainment.

14:13:38 18 Q. Now, who pushed away first? Was it the
14:13:41 19 subject?

14:13:41 20 A. It appeared that way, yeah.

14:13:43 21 Q. Okay. We'll watch it again.

14:14:01 22 At what point --

14:14:02 23 A. Yeah.

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14:14:02 1 Q. -- did he --

14:14:02 2 A. Right --

14:14:04 3 Q. -- push --

14:14:04 4 A. Right --

14:14:04 5 Q. -- away?

14:14:04 6 A. Right before -- right before he turned

14:14:06 7 to face Karl, he pushed. He pushed away.

14:14:10 8 Q. Did he extend his arm?

14:14:11 9 A. You don't need to extend your arm. You

14:14:12 10 can keep your arm close to your body and -- and use

14:14:15 11 your legs to power away.

14:14:17 12 Q. So it wouldn't have necessarily been

14:14:19 13 a push with the arms. He was just trying to escape

14:14:21 14 the officer's grasp? Would that be a more fair

14:14:25 15 characterization?

14:14:26 16 MS. HUGGINS: Form.

14:14:26 17 THE WITNESS: I don't know if he was trying

14:14:27 18 to escape the officer's grasp. He was in an

14:14:32 19 emotional state, as per the video.

14:14:37 20 People -- people react in certain ways.

14:14:41 21 And after this, he was fine, from what the video

14:14:44 22 showed.

14:14:44 23 BY MR. DAVENPORT:

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14:14:44 1 Q. But I guess did he ever use his legs to
14:14:46 2 try to push away from the officer?

14:14:48 3 A. Play it again, please.

14:14:52 4 Q. Yeah.

14:14:53 5 I guess a couple of quick questions while
14:16:05 6 we're waiting for this to load up.

14:16:07 7 Do you receive an hourly wage, or are you
14:16:09 8 salaried?

14:16:10 9 A. Salaried.

14:16:11 10 Q. You're salaried?

14:16:13 11 A. Yeah.

14:16:13 12 Q. Okay. Do you have to hit a certain
14:16:16 13 number of hours to receive your salary for a week?

14:16:18 14 A. 40.

14:16:19 15 Q. Okay. Do you receive any overtime
14:16:22 16 beyond what your salary is?

14:16:24 17 A. If I choose to take it, yeah.

14:16:25 18 Q. Okay. And how is your overtime rate
14:16:28 19 determined?

14:16:29 20 A. Time and a half.

14:16:31 21 Q. Time and -- so how do you determine
14:16:34 22 what time and a half is if you're not paid hourly?

14:16:38 23 MS. HUGGINS: Form.

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14:16:38 1 THE WITNESS: Yeah. That's broken down by
14:16:45 2 payroll. I mean, yeah, there -- there's an hourly
14:16:47 3 rate, but I make -- I made -- at the time, I think
14:16:51 4 it was forty-three seven.

14:16:55 5 BY MR. DAVENPORT:

14:16:55 6 Q. Okay. So were you salaried at that
14:16:57 7 time as well?

14:16:58 8 A. Yeah.

14:16:59 9 Q. Okay. Are all officers salaried
14:17:01 10 workers or are some of them hourly?

14:17:03 11 A. No. It's all salary.

14:17:04 12 Q. It is all salary? Okay.

14:17:07 13 So, now, just so that way we can go back to
14:17:16 14 what we were trying to look at before, I just want
14:17:19 15 you to focus on whether the subject ever extends
14:17:22 16 his arm or uses his legs in any sort of fashion
14:17:24 17 that would lead you to believe that he's trying to
14:17:27 18 push away from Officer Karl Schultz.

14:17:28 19 MS. HUGGINS: If it's possible, can you go
14:17:30 20 back one more second?

14:17:31 21 MR. DAVENPORT: Yeah, I'll try.

14:17:34 22 MS. HUGGINS: I know it's not cooperating,
14:17:37 23 but --

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